

Reserved**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****TRANSFERRED APPLICATION No. 45 of 2023**Thursday, this the 05th day of December, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

IC-45549A Maj. Gen. Sanjay Sethi (Retd.) S/o Late Lt. Gen. S.L. Sethi (Retd.), R/o B-16, South City, Lucknow, U.P., Pin-226025.

..... ApplicantLd. Counsel for the : **Shri Manoj Kumar Awasthi**, Advocate
Applicant **Shri Anshuman Srivastava**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi-110011.
2. The Chief of the Army Staff, Integrated HQ of Ministry of Defence (Army), South Block, DHQ PO, New Delhi-110011.
3. The Adjutant General, Through ADG, PS, Integrated HQ of Ministry of Defence (Army), South Block, DHQ PO, New Delhi-110011.
4. The Principal Controller of Defence Accounts (Pension), Allahabad, Uttar Pradesh.

.....RespondentsLd. Counsel for the : **Dr. Shailendra Sharma Atal**, Advocate
Respondents. Central Govt. Standing Counsel

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”

1. The instant application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, before the Armed Forces Tribunal, Principal Bench, New Delhi, which has been transferred to this Tribunal and has been renumbered as Transferred Application No. 45 of 2023, for the following reliefs:-

- a) *Set aside the order dated 01.09.2022, whereby the Applicant’s claim for disability element of pension has been arbitrarily rejected by the Respondents;*
- b) *Direct the Respondents to treat the Applicant’s disability on account of “PRIMARY HYPERTENSION” as Aggravated by military service, if not Attributable to military service;*
- c) *Direct the Respondents to pay disability element of pension to the Applicant at the rate of 50% (30% rounded off to 50%) with effect from 31.08.2021 thereby granting the benefit of rounding off/broad banding policy of the Govt.*
- d) *Direct the Respondents to pay arrears of disability element of pension, after calculating the same at the rate of 50% with effect from 31.08.2021, with interest at the rate 10% per annum until the date of actual payment; and*
- e) *Issue such other order(s)/direction(s) as may be deemed appropriate in the facts and circumstances of the case.*

2. Briefly stated, applicant was commissioned in the Indian Army on 24.08.1985 and retired on 31.08.2021 in Low Medical Category on attaining the age of superannuation. The applicant is in receipt of Service Pension. Before retirement from service, the Release Medical Board (RMB) held at Military Hospital, Jaipur on 24.08.2021 assessed his disability '**PRIMARY HYPERTENSION (I-10)**' @30% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 27.01.2022. The applicant preferred First Appeal dated 07.05.2022 which too was rejected vide letter dated 01.09.2022. It is in this perspective that the applicant has preferred the present Application.

3. Learned Counsel for the applicant pleaded that at the time of commission, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of commission in Army. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @30% for life has been regarded as NANA by the RMB, hence as per 37 (a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that *“An Officer who retires on attaining the prescribed age of retirement or on completion of tenure, if found suffering on retirement, from a disability which is either attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted in addition to the retiring pension admissible, a disability element from the date of retirement if the degree of disability is accepted at 20% or more”* the applicant is not entitled to disability element of disability pension. He further submitted that as per para 5 of Entitlement Rules, 2008 the medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination, therefore, it may not detect some dormant disease. Besides certain hereditary conditions and congenital diseases may manifested later in life irrespective of service conditions. The mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service. He further submitted that the onset of the applicant's disability was in November, 2019 at Jaipur which is a peace location. The applicant was detected with elevated blood pressure during evaluation of dizziness, double vision and headache. On initial examination his BP was 180/110 mmHg. On diplopia charting he was found to have double elevator palsy. He was stated on

medication for the same following which there was improvement in the diplopia, rest of the general and systemic examination was unremarkable. The applicant was diagnosed as case of Cavitatory Lung Nodules for which he wave unwillingness for any further investigation. The applicant was placed in Low Medical Category for both the conditions with suitable employability restrictions. During the RMB the applicant was stable with optimum blood pressure control on medication, his haematological and metabolic profile was within acceptable range. There was no evidence of any target organ damage. Further, Primary Hypertension is a multifactorial disorder with a genetic preponderance may be held aggravated if its onset is in Field/HAA/CI Ops, in terms of Para 43, Chapter VI, Guide to Medical Officers (Military Pension), 2002/2008. There was no close time association with service in field (General Officer did not serve in field after August 2007). There is no delay in initiation of treatment. Therefore, applicant had a stable course of the disease with optimal control of based pressure and there was no evidence of aggravation of the disease in terms of target organ damage at the time of retirement. Ld. Counsel for the respondents relied upon the order dated 11.01.2024 passed by the Armed forces Tribunal, Regional Bench, Kochi in Original Application No. 21 of 2023, **Colonel K N Sreekumar (Retd) Vs. Union of India & Others** and order dated 07.02.2024 passed by Armed Forces Tribunal, Regional Bench, Mumbai in Original Application No. 36 of 2023, **Col Nitin Kumar**

Tewari (Retd) Vs. Union of India & Others and stated that aforesaid Original Applications for the grant of disability element of pension for the disabilities “Primary Hypertension” and “Diabetes Mellitus” have been dismissed. He pleaded for dismissal of the Transferred Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are two folds:-

- (a) Whether the disability of the applicant is attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. The law on attributability of a disability has already been settled by the Hon’ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a

disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

7. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by

endorsing that the disability '**PRIMARY HYPERTENSION (I 10)**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in November, 2019 while posted in Peace location (Jaipur) vide Medical Board dated 26.12.2019 and due to an idiopathic disease having a genetic basis/life style related as per current medical literature and it has no causation relationship with military service/job profile of the applicant, therefore, applicant is not entitled to disability element of disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability element of disability pension to applicant are cryptic, not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was commissioned in Indian Army on 24.08.1985 and the disability has started after more than 34 years of Army service i.e. in November, 2019. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra), and the disability of the applicant should be considered as aggravated by military service.

8. According to the Indian Medical Research there is a strong and significant correlation between Hypertension (High Blood

Pressure) and excess weight with studies showing that Obesity is a major risk factor for developing Hypertension in the Indian Population; meaning more overweight someone is, the higher likelihood of developing Hypertension. In this case the applicant medical records show that he is within the prescribed weight limit. This shows that the weight of the individual is not contributing factor at all.

9. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of Hon'ble Supreme Court judgment in the case of ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10th December 2014). In this Judgment the Hon'ble Apex Court nodded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalided out of service and denying the same to the personnel who have retired on attaining the age of superannuation or on completion of their tenure of engagement. The relevant portion of the decision is excerpted below:-

“4. By the present set of appeals, the appellant (s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India,

dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

5. *We have heard Learned Counsel for the parties to the lis.*

6. *We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.*

7. *The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.*

8. *This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us."*

10. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

11. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Union of India and Ors vs Ram Avtar & ors (supra)***

as well as Government of India, Ministry of Defence letter No.17(01)/2017/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @30% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his retirement.

12. We have gone through the order dated 11.01.2024 passed by the Armed Forces Tribunal, Regional Bench, Kochi in Original Application No. 21 of 2023, **Colonel K N Sreekumar (Retd) Vs. Union of India & Others** and order dated 07.02.2024 passed by Armed Forces Tribunal, Regional Bench, Mumbai in Original Application No. 36 of 2023, **Col Nitin Kumar Tewari (Retd) Vs. Union of India & Others** on which Ld. Counsel for the respondents relied upon. We are of the view that these orders are not applicable in the present case as in these cases the law laid down by the Hon'ble Apex Court in the case of **Dharamvir Singh Versus Union of India & Others** (supra) with regard to attributability/aggravation has not been discussed by the respective Regional Benches of the Armed Forces Tribunal.

13. Further, Hon'ble High Court of Punjab and Haryana at Chandigarh vide its Judgment dated 28.08.2024 in the case of CPW-21056-2024 (O&M), **Union of India and Others Vs. No. 737233 L Ex JWO Ishwar Singh Negi & Anr**, has upheld the order dated 21.11.2022 passed by Armed Forces Tribunal,

Regional Bench, Chandigarh and in terms of law laid down by the Hon'ble Supreme Court in ***Dharamvir Singh's*** case (supra) the disabilities 'Primary Hypertension' and Diabetes Mellitus Type – II (Old)' have been held as attributable to and aggravated by the military service.

14. In view of the above, the **Transferred Application No. 45 of 2023** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The disability of the applicant is held as aggravated by Army Service. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% for life from the next date of his retirement. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life from the next date of his retirement. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @8% per annum till the actual payment.

15. No order as to costs.

(Lt. Gen. Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 05 December, 2024

AKD/-