

Court No. 1 (E. Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 580 of 2021**

Monday, this the 28th day of February, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Aniket Singh, Ex. EA (P) – SS/APP (U/T) Service No. 507187-Z,
S/o Shri Arjun Singh, permanent Resident of Village – Revwa
Babu, Post – Harraiya, District – Basti, Uttar Pradesh-272155.

..... **Applicant**

Ld. Counsel for the Applicant : **Shri Raj Kumar Mishra**, Advocate.
Ms. Upasna Mishra, Advocate
Shri Ankit Tiwari, Advocate

Versus

1. Union of India, through Secretary, Department of Ex-Servicemen Welfare, Ministry of Defence, Govt. of India, New Delhi.
2. The Chief of the Naval Staff, Integrated Headquarters of Ministry of Defence (Navy), New Delhi-110011.
3. The Logistics Officer-in-Charge Naval Pension Office C/o INS Tanaji, Sion – Trombay Road, Mankhurd, Mumbai-400088.
4. Commodore Bureau of Sailors, Cheetah Camp, Mankhurd, Mumbai-400088.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Near Sadar Bazar, Prayagraj (UP)-211014.

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri Arun Kumar Sahu**, Advocate
Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (a) *The Impugned order dated 13.07.2021 (Annexure A1) rejecting claim of invalid pension may kindly be quashed and set aside being arbitrary and illegal.*
- (b) *The respondents may be directed to grant Invalid Pension to the applicant from the date of discharge i.e. 20.12.2020 along with arrears of pension with interest @18% p.a.*
- (c) *Any other relief which is deemed appropriate in the facts and circumstances of the present matter may kindly be granted in favour of the humble applicant.*

2. Briefly stated, applicant was enrolled in the Indian Navy on 31.08.2018 and was invalided out from service on 20.12.2020 in Low Medical Category after rendering 02 years, 02 months and 29 days of service. At the time of invalidation from service, the Invaliding Medical Board (IMB) held at Jamnagar on 24.08.2020 assessed his disability ‘**PRIMARY HYPERTENSION ICD NO. I 10.0**’ @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 22.02.2021. The applicant preferred representation for grant of disability pension which too was rejected vide letter dated

13.07.2021. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Navy and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Navy. The disease of the applicant was contacted during the service, hence it is attributable to and aggravated by Naval Service. Ld. Counsel for the applicant has relied upon the Hon'ble Apex Court judgment in the case of **Sukhwinder Singh vs Union of India & Ors**, reported in (2014) STPL (WEB) 468 SC and contended that since applicant's services were cut short and he was invalided out from service prior to completion of terms of engagement, therefore, applicant deserves to be granted disability pension.

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 IMB, hence applicant is not entitled to invalid pension in terms of Regulation 101 of Navy Pension Regulations, 1964. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Invaliding Medical Board proceedings as well as the records and

we find that the questions which need to be answered are of three folds:-

- (a) Whether the applicant is entitled for Invalid Pension.
- (b) Whether the disability of the applicant is attributable to or aggravated by Naval Service?
- (c) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. Government of India, Department of Ex-Servicemen Welfare letter No. 12(06)/2019/D(Pen/Pol) dated 16.07.2020 provides that invalid pension is admissible to Armed Forces Personnel with less than 10 years of qualifying service in cases where personnel are invalided out of service on account of any bodily or mental infirmity which is neither attributable to nor aggravated by military service and which permanently incapacitates them from military service as well as civil employment. However, in this case the applicant Fitness Certificate for civil employment has been issued by Invaliding Medical Board certifying that the applicant is fit for normal civil employment not requiring high physical fitness. Since the applicant has not been permanently incapacitated from military service as well as civil employment, we are of the opinion that the applicant is not entitled for Invalid Pension.

7. 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)."

8. In view of the settled position of law on attributability, we find that the IMB has denied attributability to the applicant only by endorsing that the disability '**PRIMARY HYPERTENSION ICD NO.I 10.0**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in October, 2019 while posted in Peace location (Jamnagar), therefore, applicant is not entitled to 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 pension to applicant is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous naval training and associated stress and strain of naval service. 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 naval service.

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 invalidated 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(01)/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(01)/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off 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 invalidation.

12. In view of the above, the **Original Application No. 580 of 2021** deserves to be allowed, hence **allowed**. The impugned

orders, rejecting the applicant's claim for grant of disability pension, are set aside. The disability of the applicant is held as aggravated by Naval Service. The applicant is entitled to get disability pension @30% for life which would be rounded off to 50% for life from the next date of his invalidation. The respondents are directed to grant disability pension to the applicant @30% for life which would stand rounded off to 50% for life from the next date of his invalidation. 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

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 28 February, 2022

AKD/-