

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 242 of 2023**Wednesday, this the 09th day of February, 2024**“Hon’ble Justice Anil Kumar, Member (J)
Hon’ble Lt Gen Anil Puri, Member (A)”**

Maj Gen Arup Kumar Sasmal, AVSM (Retd), S/o Sri Bibeka Nand Sasmal, R/o 489-A, Shivaji Nagar, Baghambari Gaddi, Allahabad.

..... Applicant

Ld. Counsel for the Applicant : **Col AK Srivastava (Retd)**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. OC Officer Records, MP-5 & 6, AG’s Branch, Integrated HQ of MoD (Army), West Block-III, RK Puram, New Delhi-110066.
4. Principal CDA, PCDA (P), Draupadi Ghat, Allahabad-211014.

.....Respondents

Ld. Counsel for the Respondents. : **Mrs Anju Singh**, Advocate
Central Govt. Counsel

ORDER (Oral)

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

- (i) *Issue/Pass an order or direction of appropriate nature to summon and quash/set aside orders leading to denial of applicant's 51% disability element of pension duly rounded off to 75%, due to his 30% disability due to 'CORONARY ARTERY DISEASE (NON OBSTRUCTIVE) (I.25)' and 30% disability due to 'Primary Hypertension (I.10)' for life and hereby grant the said entitled disability element of pension duly rounded off to 75% by considering both disabilities as attributable to and/or aggravated by military service.*
- (ii) *Issue/pass an order or direction of appropriate nature to quash/set aside respondents' AGPS-4 letter dated 15.12.2022 (Annexure A-1) rejecting applicant's 2nd appeal for grant of his entitled 51% composite disability due to his 30% disability of 'Coronary Artery Disease (Non Obstructive) (I.25)' and 30% disability due to 'Primary Hypertension (I.10)' and thereafter grant his entitled 50% disability element of pension duly rounded off to 75% for life.*
- (iii) *Issue/pass an order or direction of appropriate nature to quash/set aside remarks in applicant's RMB dated 02.12.2021 that his 30% disability of 'Coronary Artery Disease (Non Obstructive) (I.25)' and 30% disability due to 'Primary Hypertension (I.10)' were neither attributable to nor aggravated by military service and thereafter consider said disabilities to be attributable to and/or aggravated by military service and accordingly grant him his entitled 51% composite disability element of pension duly rounded off to 75% for life in the interest of justice.*
- (iv) *Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (v) *Allow this application with costs.*

2. Brief facts of the case is that the applicant was commissioned in the Indian Army on 15.12.1984 and retired from service on 30.06.2022 (A/N) on reaching the age of superannuation. At time of retirement, the applicant being in low medical category was brought before a duly constituted Release Medical Board (RMB) held at Base Hospital, Delhi Cantt in the month of Jan, 2022 assessed his disabilities (i) **'Coronary**

Artery Disease (Non Obstructive) (I.25)' @ 30% for life and (ii) 'Primary Hypertension (I.10)' @ 30% for life and composite disability @ 51% for life in respect of both the disabilities and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability element of pension was rejected vide letter dated 16.03.2022. Thereafter, first and second appeals preferred by the applicant were also rejected vide letter dated 20.07.2022 and 15.12.2022. It is in this perspective that the applicant has filed 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 Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment 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 pension and its rounding off to 50%.

4. In support of his contention, learned counsel for the applicant has relied upon judgment of the Hon'ble Supreme Court in the case of ***Sukhwinder Singh vs Union of India & Ors***, (2013) 7 SCC and ***Union of India & Ors vs Ram Avtar***, Civil Appeal No.418 of 2012 decided on 10.12.2014.

5. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant @ 51% for life have been regarded as

NANA by the RMB, therefore under Para 37(a) and 81(a) of Pension Regulations for the Army, 2008 (Part-I), the applicant is not entitled to disability element of pension. He pleaded for dismissal of the Original Application.

6. Learned counsel for the respondents in Para 13 of the counter affidavit has stated that the applicant underwent medical examination at 16 years of age for joining National Defence Academy in 1980 and developed the disabilities after 41 years of initial medical examination in 2021, a year prior to his superannuation. It was further submitted that the officer was last posted to a field station in 2001 and thereafter, has always been posted to a peace station for the last 21 years of his service till his superannuation. It was also stated that the applicant is a smoker and he was time and again was advised by the medical authorities to avoid smoking.

7. In support of his contention, learned counsel for the respondents has relied upon order dated 23.05.2012 passed by the Hon'ble Supreme Court in the case of ***UOI & Anr vs Ex Rfn Ravinder Kumar***, order dated 03.10.2019 passed by the Hon'ble Supreme Court in the case of ***Ex Cfn Narshing Yadav vs UOI & Ors*** and numerous orders passed by the AFT (PB), New Delhi and AFT (RB), Jabalpur. The learned counsel for the respondents has also relied upon order dated 03.07.2023 passed by the Hon'ble Supreme Court in ***Union of India & Ors vs Brig Mohanan Nair (Retd)*** in which the Hon'ble Apex Court has stayed grant of disability element of pension allowed by AFT (RB) in O.A. No. 437 of 2018. He pleaded for dismissal of O.A.

8. 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 of two folds:-

- (a) Whether the disabilities of the applicant are 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?

9. On perusal of record we find that the applicant is suffering from disabilities i.e. (i) '**Coronary Artery Disease (Non Obstructive) (I.25)**' and (ii) '**Primary Hypertension (I.10)**'. As per RMB applicant has been assessed first and second disabilities to be 30% for life respectively and composite disability for both the disabilities @ 51% for life. Therefore, we would like to find out whether the disabilities of the applicant are attributable to or aggravated by military service.

10. 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)."

11. 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 disabilities to be NANA by military service on the ground of onset of disability on 23.02.2021 while posted in Peace location (New Delhi), therefore, applicant is not entitled to disability element of 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 pension to applicant is 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 15.12.1984 and the disabilities have started after more than 36 years of Army service i.e. in the year 2021. 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***, (2013) 7 Supreme Court Cases 316, and the disabilities of the applicant should be considered as aggravated by military service.

12. The law on the point of rounding off of disability element of 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."*

13. 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*** 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 element of pension @ 51% for life to be rounded off to 75% for life may be extended to the applicant from the next date of discharge.

14. In view of the above, the **Original Application No. 242 of 2023** deserves to be allowed, hence **allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of pension, is set aside. The disabilities (i) '**Coronary Artery Disease (I.25)**' and '**Primary Hypertension (I.10)**' of the applicant are held as aggravated by Army Service. The applicant is entitled to get disability element @ 51% for life which would be rounded off to 75% for life from the next date of his discharge i.e. 01.07.2022. The respondents are directed to grant disability element to the applicant @ 51% for life which would stand rounded off to 75% for life from the next date of his discharge. 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% p.a. till the actual payment

15. No order as to costs.

16. Miscellaneous application (s), pending if any, stand disposed off.

17. Departmental Representative for the respondents orally submitted to grant leave to appeal against the above order, which we have considered and no point of law of general public importance being involved in this case, the plea is rejected.

(Lt Gen Anil Puri)
Member (A)

Dated :09.02.2024

rathore

(Justice Anil Kumar)
Member (J)