

Reserved
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 134 of 2023

Tuesday, this the 20th day of February, 2024

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

“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Abhishek Singh (No. 18006942F Ex. SPR), S/o Baban Singh, Presently Residing at Bhagirathi Colony (Patel Nagar), Near Vijay Nagar Chauraha, Nilmatha, Lucknow -226002.

..... Applicant

Ld. Counsel for the Applicant : **Shri Yashpal Singh**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Additional Director General Personnel Services, Adjutant General’s Branch, Integrated Headquarters of Ministry of Defence (Army), PIN-900256, C/o 56 APO.
3. Invalidment Medical Board through its President held at the Military Hospital, Ambala.
4. Officer-in-Charge Records, Bengal Engineer Group, Roorkee, PIN-908779, C/o 56APO.
5. Principal Controller of Defence Accounts (Pension), Draupdi Ghat, Prayagraj -211014.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Asheesh Agnihotri**, Advocate
Central Govt. Standing Counsel
Assisted by **Major Danish Faraqui**
Departmental Representative

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, 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) *Issue/pass an order setting aside the recommendations of Invalidment Medical Board dated 31.12.2021 to the extent of holding the applicant’s disability as neither attributable to nor aggravated by military service, and order/letter dated 29.10.2022 issued by the Officer-in-Charge Records, Bengal Engineer Group rejecting his claim for grant of disability pension, after summoning the relevant original records.*
- (b) *Issue/pass an order directing the respondents to consider case of the applicant for grant of disability pension and provide the same from the date of discharge including arrears with interest, and also the benefit of rounding off and other consequential benefits of ex-serviceman.*
- (c) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (d) *Allow this Original Application with cost.*

2. Briefly stated, applicant was enrolled in the Indian Army on 17.01.2011 and invalided out from service on 20.03.2022 in Low Medical Category before completion of terms of engagement after rendering 11 years, 02 months and 04 days of service under Rule 13 (3) Item III (iii) of the Army Rules, 1954. At the time of invalidation from service, the Invalidment Medical Board (IMB) held at Military Hospital, Ambala on 31.12.2021 assessed his disability ‘**RECURRENT DEPRESSIVE DISORDER CURRENT EPISODE MODERATE (F-33.1)**’ @40% for life

and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant has been granted Invalid Pension @Rs.18,075/- per month vide Principal Controller of Defence Account (Pension), Allahabad PPO No. 212202201468 generated through SPARSH on 17.10.2022. However, the applicant's claim for grant of disability pension was rejected vide letter dated 29.10.2022. 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 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. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @ 40% for life has been regarded as NANA by the IMB, hence as per Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I) which provides that "*An individual released/retired/discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or*

aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20% or more” and Regulation 81(a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that *“Service personnel who is invalided from service on account of a disability which is attributable to or aggravated by such service may, be granted a disability pension consisting of service element and disability element in accordance with the Regulations in this section”* the applicant is not entitled to disability pension. He further submitted that Para 4 (a) of Entitlement Rules, 2008 provides that *“Invalidation from service with disablement caused by service for grant of disability pension. However, disability element will also be admissible to personnel who retire or are discharged on completion of terms of engagement in low medical category on account of disability attributable to or aggravated by military service, provided the disability is accepted as not less than 20%”*. 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 Invalidment 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 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 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 IMB has denied attributability to the applicant only by endorsing that the disability “**RECURRENT DEPRESSIVE DISORDER CURRENT EPISODE MODERATE (F-33.1)**’ is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in February 2017 while posted in Peace location (Chandimandir), 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 Invalidment 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 military training and associated stress and strain of military service. The applicant was enrolled in Indian Army on 17.01.2011 and the disability has started after more than 7 years of Army service i.e. in February 2017. Further, we also find that Surg. CDR Amit Chail, Graded Specialist (Psychiatry), Command Hospital (Western Command), Chandimandir has opined that

“This 33 yrs old serving soldier with 10 yrs of service, no genetic loading of psychiatric illness manifested with Depressive symptoms (2015) in the form of irritable mood, easy fatigability, forgetfulness, heaviness of head and reduced sleep. His symptoms continued till around Feb 2017 when he was admitted and treated as a case of Depressive Episode with 02 Antidepressants. He was sent on 04 weeks sick leave. Review after sick leave found him to be symptomatic, he was treated as in patient for another nearly 12 weeks. He was discharged in LMC S3 (T-24). Indl had multiple relapses since then and was admitted 05 times (including 01 with deliberate drug overdose). During last 04-05 years indl has been treated with different classes of Anti-depressants and treatment augmented with mood stabilizers and SGA. He was revised to Recurrent Depressive Disorder. Indl had 05 relapses in less than 05 years despite adequate treatment and sheltered appointment in a peace area. The nature, course and severity of illness makes him vulnerable for another episode in view of stress and strain of military service”.

8. The applicant was enrolled in Indian on 17.01.2011. According to medical report no adverse family history was reported and no depressive episode and its relapse was reported before February, 2017. His illness has taken a chronic course with five relapses in last five years of his being invalidated out from service in low medical category.

9. In view of above, we are 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.

10. 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 January 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."*

11. 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.

12. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Union of India and Ors vs Ram Avtar & (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 @ 40% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his invalidation from service.

13. In view of the above, the **Original Application No. 134 of 2023** deserves to be allowed, hence **allowed**. The impugned order, rejecting the applicant's claim for grant of disability pension, is set aside. The

disability of the applicant is held as aggravated by Army Service. The applicant is entitled to get disability pension @40% for life which would be rounded off to 50% for life from the next date of his invalidation from service. The respondents are directed to grant disability pension to the applicant @40% for life which would stand rounded off to 50% for life from the next date of his invalidation from service. The Invalid Pension paid to the applicant from the next date of his discharge shall be adjusted from the arrears. 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

14. No order as to costs.

15. Major Danish Farooqui, Departmental Representative 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 the case the plea is rejected.

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated : 20 February, 2024

Ashok/AKD/-

(Justice Anil Kumar)
Member (J)