

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 1102 of 2024

Thursday, this the 27th day of February, 2025

“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

NS-23294L Maj. Ranji Devi (Retd.) W/o Shri Supahia, R/o Village
 – Bhojawala, Po- Pachhmiwala, Vikasnagar, Dehradun,
 Uttarakhand.

..... Applicant

Ld. Counsel for the : **Shri Aditya Singh Puar**, Advocate
 Applicant **Ms. Shalani Puar**, Advocate

Versus

1. Union of India, through Secretary to Govt. of India, Ministry of Defence, South Block, New Delhi -110011.
2. Additional Director General of Personnel Services, PS Directorate, Sena Bhawan, DHQ PO, New Delhi -110011.
3. Integrated Headquarters of Ministry of Defence (Army), Adjutant General's Branch, DGMS (Army)/ MPRS (O), 3rd Floor, 'A' Block, Room No. 334/335, Defence Offices Complex, KG Mark, New Delhi.
4. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad (U.P.).

.....Respondents

Ld. Counsel for the : **Dr. Shesh Narain Pandey**, Advocate
 Respondents. Central Govt. Standing Counsel

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 :-

- (i) *Original applicant, hence, Prays for quashing the Impugned orders 1 & (2) (Colly) and 3, in so far as they declare the Original Applicants disability to have been not attributable / Not Aggravated by military service.*
- (ii) *The Original Applicant further prays for grant of disability service and disability element, in accordance with the Respondents applicable Rules,*
- (iii) *In the alternative, in the event that relief prayed for in (i) and (ii) above is found to be impermissible, the Original Applicant prays for grant of disability pension including service and disability elements from her date of release from service (04.09.2023), and as held by the Hon’ble Supreme Court vide judgments referred to Supra, and the Entitlement Rules, 1982, by setting aside that part of the Medical Board (Impugned Order (1) and the consequent rejection (Impugned Order (2) & (3) wherein her disability has been opined to be neither attributable to, nor aggravated by military service being not only in conflict with Rules but also in direct contravention of a series of decisions of the Hon’ble Supreme Court (as seen supra);*
- (iv) *With a further prayer that the Respondent’s may be directed to release disability pension for life, along with arrears to the Original Applicant, along with the benefit of Broad banding in accordance with the Judgment of the Hon’ble Supreme Court in Union of India V/s Ram Avatar with heavy costs and compensation and interest within a time – bound manner.*
- (v) *Any other relief which the Hon’ble Tribunal may deem fit in the interest of Original Applicant.*

2. Briefly stated, applicant was commissioned in the Military Nursing Service of Indian Army on 05.09.2013 as Short Service Commissioned Officer and retired on 04.09.2023 in Low Medical

Category on completion of terms of engagement. Before retirement from service, the Release Medical Board (RMB) held at Army Hospital (R&R), Delhi Cantt on 03.08.2023 assessed his disability **'TYPE-I DIABETES MELLITUS ICD DIAGNOSIS INSULIN DEPENDENT DIABETES MELLITUS (E-10)' @40%** 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 23.01.2024. The applicant preferred First Appeal dated 02.03.2024 which too was rejected vide letter dated 28.06.2024. 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 commission, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that she 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. The applicant while serving in Tezpur, Assam (Field Area), and area well known for being endemic for infectious disease, fell victim to a serious and severe infection, some years prior to the onset of her disability. The said infection caused the applicant to become so unwell that she had to be hospitalized for several weeks and later the applicant had been airlifted at the directions of medical staff to Command Hospital, Kolkala for

specialized treatment to save her life. The aforesaid fact was ignored by the RMB, which should have rightfully taken it into account in terms of Para 26 of Guide to Medical Officer (Military Pensions), 2008. 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 RMB, hence as per Regulations 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”* and Regulation 81 of the Pension Regulations for the Army, 2008 (Part-I) which stipulates that service personnel who is invalided from service on account of disability which is attributable to or aggravated by such service, may, be granted a disability pension consisting of service element and disability element, the applicant is not entitled to disability pension. He further submits that Rule 4(a) of Entitlement

Rules for Casualty Pensionary Awards to Armed forces Personnel, 2008 provides that *“Invalidation from service with disablement caused by service factors is a condition precedent for grant of disability pension. However, disability element will also be admissible to personnel who retire or discharge 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 Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are three folds:-

- (a) Whether the disability of the applicant is attributable to or aggravated by Military Service?
- (b) Whether Short Service Commissioned Officers are entitled for the grant of Disability Pension?
- (c) 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 RMB has denied attributability to the applicant only by endorsing that the disability '**TYPE-I DIABETES MELLITUS ICD DIAGNOSIS INSULIN DEPENDENT DIABETES MELLITUS (E-10)**' is neither attributable to nor aggravated (NANA) by service on the ground that it is not related to Military Service, 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 is cryptic, not convincing and doesn't reflect the complete truth on the matter. We also find that prior to onset of aforesaid disability the applicant was posted at 155 Base Hospita, Tezpur, from 05.09.2013 to 16.02.2017, which is a Field Station. Even 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 05.09.2013 and the disability has started about five years of Army service i.e. in July, 2018. 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. Further, consequent upon the issue of Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi letter No. 1(9)/2006/D(Pen-C) dated 30.08.2006 and letter No. 16(01)/2012-D(Pen-Pol) dated 23.03.2015, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 23 dated 27.05.2015 wherein it is provided that *“in the case of aggravation too, service element of disability pension in respect of non-regular officers would be calculated after taking into account the full commissioned service rendered by them as calculated in the case of Regular Commissioned Officer. As such EC/SSC officers in aggravation cases would also be allowed the benefit of revision w.e.f. 30.08.2006 as allowed to attributable cases vide MoD letter dated 30.08.2006.”*

9. In view of the Circular No. 23 dated 27.05.2015 issued by the Principal Controller of Defence Accounts (Pension), Prayagraj the applicant is entitled for disability pension which include disability element as well as service element also.

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 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.”

11. 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.

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 & 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 pension @40% for life to be rounded off to 50% for life, which include service element as well as disability element, may be extended to the applicant from the next date of her retirement.

13. In view of the above, the **Original Application No. 1102 of 2024** 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 Army Service. The applicant is entitled to get disability pension @40% for life, which include service element as well as disability

element, which would be rounded off to 50% for life from the next date of her retirement. The respondents are directed to grant disability pension to the applicant @40% for life which would stand rounded off to 50% for life, which include service element as well as disability element, 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.

14. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 27 February, 2025

AKD/-