

Reserved
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 130 of 2024

Friday, this the 28th day of February, 2025

“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”

No. 14648410F Ex. Hav. Sushil Kumar, S/o Late Rajendra Prasad Singh, Residence of C/o Smt. Tara Lata, W/o Late Ram Pravesh Rai, Sector – A, RC Traders Lane, Vijaynagar, Neelmatha, P.O. – Dilkusha, Pin-226002 (UP).

..... Applicant

Ld. Counsel for the : **Shri K.P. Datta**, Advocate
Applicant

Versus

1. Union of India, through its Secretary, Integrated HQs of MoD (Army), New Delhi-110011.
2. The Chief of the Army Staff, COAS Sectt, Sena Bhawan, IHQ of MoD (Army), New Delhi-110001.
3. The Officer in Charge, Records EME, Secunderabad, Pin-900453 C/o 56 APO.
4. The PCDA (P), Draupadi Ghat, Allahabad, Pin-211014 (UP).

.....Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh**, 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 :-

- A. *To issue/pass an order to set-aside/quash rejection order passed by Records EME letter No. 14648410F/DP-4/Pen dated 28.04.2023.*
- B. *To issue/pass an order to grant composite disability element @46.2% with benefits of Rounding off to 50% in light of Judgment of Hon’ble Apex Court and Orders of Hon’ble Armed Forces Tribunal passed in similar cases from next date of discharge wef 01.08.2023.*
- C. *To issue/pass an order to grant arrears of disability element along with interest @18% p.a. on arrears from next date of discharge wef 01.08.2023.*
- D. *To any other order as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Corps of EME of Indian Army on 21.01.2002 and discharged on 31.07.2023 in Low Medical Category before fulfilling the conditions of his enrolment under Rule 13 (3) Item III (ii)(a)(i) of the Army Rules, 1954 after rendering 21 years, 06 months and 11 days of service due to non-availability of sheltered appointment. The applicant is in receipt of Service Pension. Before discharge from service, the Release Medical Board (RMB) held at 170 Military Hospital, C/o 56 APO on

29.03.2023 assessed his disabilities (i) '**DIABETES MELLITUS TYPE-II (E-11)**' @20%, (ii) '**PRIMARY HYPERTENSION (I-10)**' @30% and (iii) '**SIMPLE OBESITY (E-66)**' @5%, **composite disabilities @46.2% for life** and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 28.04.2023. The applicant preferred First Appeal 28.07.2023 but of no avail. 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 diseases of the applicant were contracted during the service, hence they are 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 composite disabilities of the applicant @46.2% for life have been regarded as NANA by the RMB, hence as per Regulation 81 of the Pension Regulations for the Army, 2008 (Part-

l) 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 element of disability pension. He further contended that at the time of discharge the applicant was overweight as his weight was 84.5 Kg against the ideal weight of 66 Kg. As such the applicant was overweight 28%. The overweight is the root cause for the aforesaid disabilities. 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 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?

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 first disability i.e. **‘DIABETES MELLITUS TYPE-II (E-11)’** is neither attributable to nor aggravated (NANA) by service on the ground of onset of first disability in December, 2018 while posted in Peace location (Zirakpur, Punjab), therefore, applicant is not entitled to disability element of disability pension for the first disability. 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 for the first disability is 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 enrolled in Indian Army on 21.01.2002 and the first disability has started after more than 15 years of Army service i.e. December, 2018. The argument of Ld. Counsel for the respondents that the cause of first disability is obesity is not tenable because onset of first disability is December, 2018 whereas the onset of

Obesity is November, 2021. There is nothing on record that applicant was obese in 2018 also. In the RMB proceedings the cause of first disability i.e. '**DIABETES MELLITUS TYPE-II (E-11)**' is not mentioned due to overweight. Only peace area cannot be a reason to deny the aggravation by military 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 first disability of the applicant should be considered as aggravated by military service.

8. In the RMB proceedings of the applicant, the disability of '**PRIMARY HYPERTENSION (I-10)**' is opined as NANA and in detailed justification it is mentioned that the disability is a metabolic effect of Obesity vide Para 43 Chapter VI of Guide to Medical Officers (Military Pensions), 2008. At the time of discharge from service, we find that applicant's ideal weight was 66 Kg whereas the actual weight was 84.5 Kg, over weight is 18.5 Kg, which is 28% excess than the ideal weight. The RMB has also reported the applicant as obese. The onset of second and third disabilities is November, 2021. On the basis of different studies and medical opinion we are of the view that obesity plays a vital role in disability like Hypertension etc. which is a serious health condition that entails a higher risk of cardio-vascular diseases.

9. Further, in Case Summary it is also mentioned that applicant was educated about life style measures to reduce weight. He should have reduced his weight to overcome the problem by restricting the diet and required exercise which has not been done by him, therefore, organization cannot be held liable for the own actions of the applicant. There is no denial from the fact that if the claimant is himself not controlling the factors of disability which are well within his voluntary control, he cannot be allowed to garner benefit of such beneficial schemes and provisions. We do not find any substance in the submission of the Ld. Counsel for the applicant that the disability of '**PRIMARY HYPERTENSION (I-10)**' and '**SIMPLE OBESITY (E 66)**' have causal connection with the military service. As such the applicant's second and third disabilities are held as NANA.

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 element of disability pension @20% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge for the first disability.

13. In view of the above, the **Original Application No. 130 of 2024** deserves to be partly allowed, hence **partly allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension for the first disability, is set aside. The first disability of the applicant is held as aggravated by Army Service. The second and third disabilities of the applicant are held as NANA as have been opined by the RMB. The applicant is entitled to get disability element @20% for life which would be rounded off to 50% for life from the next date of his discharge for

the first disability. The respondents are directed to grant disability element to the applicant @20% for life which would stand rounded off to 50% for life from the next date of his discharge for the first disability. 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.

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

(Justice Anil Kumar)
Member (J)

Dated : 28 February, 2025

AKD/-