

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 13 of 2024

Wednesday, this the 19th day of February, 2025

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

JC-845109N Nb Sub Jalaluddin (Retd)
S/o Shri (Late) Annu
R/o Vill – Bhadaicha, Teh – Hardoi,
Distt – Hardoi (UP) Pin-241001

..... Applicant

Ld. Counsel for the : **Shri Ravi Kumar Yadav**, Advocate
Applicant **Shri Saurabh Yadav**, Advocate

Versus

1. The Union of India, Rep by the Secretary, Govt. of India, Ministry of Defence, South Block, New Delhi – 110011.
2. The Chief of the Army Staff, Integrated Headquarters of MoD (Army), Post – DHQ, New Delhi – 110011.
3. The Officer-in-charge, Raksha Suraksha Corps Abhilekh Defence Security Corps Record, Pin -901277, C/o 56 APO.
4. PCDA (P), Draupadi Ghat, Allahabad (UP) – 211014.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**,
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 quash and set aside the Respondent No. 3 letter No. Pen/DP/JC845109N/03/22 Dated 15 Mar 2022 (Annexure A-1 of instant OA & Impugned Order).*

- B. *To issue/pass an order or directions of appropriate nature to the respondents to grant disability element for the said disability after rounding off from 20% to 50% in terms of Govt. of India letter dated 31 Jan 2001 and judgment pronounced by Hon'ble Supreme "Court in the matter of Ram Autar Vs UOI & Other from date of retirement, i.e. 01.04.2022 and to pay the arrears along with suitable rate of interest as deem fit by this Hon'ble Tribunal.*
- C. *Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Army on 31.03.1987 and discharged on 30.04.2003 after rendering more than 16 years of service for which he is in receipt of service pension. Thereafter, applicant was re-enrolled into DSC on 13.08.2004 and discharged from service on 31.03.2022 after rendering 17 years, 06 months and 25 days of service for which he is in receipt of service pension vide PPO No.194202104540. During enhanced service, the applicant was placed in low medical category P2 (Permanent) for the disability, "TYPE-2 DIABETES MELLITUS". At the time of discharge from service, the Release Medical Board (RMB) held at Base Hospital, Delhi Cantt on 05.01.2022 and assessed his disability "TYPE-2 DIABETES MELLITUS" @ 20% for life and opined the disability to be neither attributable to nor aggravated (NANA) by military service. The applicant's claim for grant of disability pension was rejected by the

respondents vide letter dated 15.03.2022. 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 re-enrolment in the Defence Security Corps (DSC), the applicant was found mentally and physically fit for service in the DSC and there is no note in the service documents that he was suffering from any disease at the time of re-enrolment in the DSC. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. The applicant preferred a representation/appeal dated 10.04.2023 which has not yet been replied by the respondents. He placed reliance on the judgment of the Hon'ble Apex Court in **Dharamvir Singh vs. Union of India & Ors**, reported in (2013) 7 SCC 316 and **Sukhwinder Singh vs. Union of India & Ors**, reported in (2014) STPL WEB 468 SC.

4. Learned counsel for the applicant further submitted that various Benches of AFT have settled the principle in various judgments that peace stations have their own pressure of rigorous military training and associated stress and strain of 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 @ 20% for life as assessed by the RMB duly rounded off to 50% for life in terms of Govt. of India letter dated 31.01.2001.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Indian Army on 31.03.1987 and discharged on 30.04.2003 in Low Medical Category on compassionate grounds under Rule 13 (3) Item III (iv) of the Army Rules, 1954 after rendering 16 years, 01 month and 01 day service for which he is in receipt of service pension vide PPO No S/016333/2003 (Army). Thereafter, applicant was re-enrolled into DSC on 13.08.2004 and on completion of its initial terms of engagement. He was granted extension of service from 13.08.2014 to 12.08.2019 and further extension from 13.08.2019 to 01.03.2020 upto the superannuation age of 55 years. The applicant was further granted extension for 02 years from 02.03.2020 to 01.03.2022 as enhanced service upto the maximum age limit of 57 years. During enhanced service applicant was placed in low medical category P2 (Permanent) for the disability, "TYPE-2 DIABETES MELLITUS". The applicant was discharged from DSC service on 31.03.2022 under Rule 13 (3) I (i) (a) of Army Rules, 1954 on completion of superannuation age of 57 years after rendering 17 years, 06 months and 25 days of service for which he is in receipt of service pension vide PPO No.194202104540. At the time of discharge from service, the Release Medical Board (RMB) held at Base Hospital, Delhi Cantt. on 05.01.2022 and assessed his disability "TYPE-2 DIABETES MELLITUS" @ 20% for life and opined the disability to be neither attributable to nor aggravated (NANA) by military

service. The applicant's claim for grant of disability pension was rejected vide letter dated 15.03.2022.

6. Learned counsel for the respondents further submitted that the applicant did not prefer any appeal against the order of rejection of disability pension claim. The applicant has also not filed rejoinder affidavit to the counter affidavit filed by the respondents meaning thereby he has accepted the averments made in the counter affidavit. The applicant has also not challenged the medical board proceedings on the basis he is claiming disability pension. The disability of the applicant @ 20% for life has been regarded as NANA by the RMB as the onset of the ID is in peace area, hence, as per Regulations 179 & 266 of the Pension Regulations for the Army, 1961 (Part-1) and Para 53 (a) & 81 of the Pension Regulations for the Army Part-1 (2008), the applicant is not meeting the eligibility criteria for grant of disability pension and therefore, he is not entitled to disability pension. He pleaded for dismissal of the Original Application.

7. 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 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?

8. 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)."

9. 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-2 DIABETES MELLITUS", is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in the year 2019 while posted in Peace area, 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 military training and associated stress and strain of military service. The applicant was re-enrolled in the DSC on 13.08.2004 and the disability has started after more than 15 years of service i.e. in the year 2019. 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.

10. The issue for denial of disability pension on origination of ID in peace area and applicability of the judgment of the Hon'ble Apex Court in the case of **Dharamvir Singh** (supra) in NANA cases has again been reiterated by the Hon'ble Apex Court in Civil Appeal No.4239 of 2023, **Union of India & Ors vs. JC-664792K Subedar Ramesh Tiwari**, dismissing the appeal of the **Union of India & Ors**, filed against the judgment/order of the AFT (RB) Jabalpur in OA No.47/2018, **Subedar Ramesh Tiwari vs. Union of India & Ors**, decided on 19.03.2018 and upheld the judgment of the AFT (RB) Jabalpur dated 19.03.2018 on the ground that it is covered case by the principles laid down by the Hon'ble Apex Court in the case of **Dharamvir Singh** (supra) and other connected cases.

11. 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."*

12. As such, in view of the decision of Hon'ble Supreme Court in the case of **Ram Avtar** (supra), we are of the considered view that benefit of rounding off of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from next date of discharge from service.

13. In view of the above, the **Original Application No. 13 of 2024** deserves to be allowed, hence **allowed**. The impugned order dated 15.03.2022, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The disability of the applicant is held as aggravated by Army Service in terms of

judgment of the Hon'ble Apex Court in the case of **Dharamvir Singh** (supra). 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 from service. 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 from service. 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 : 19th February, 2025

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