

**RESERVED**  
**Court No.1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**Original Application No. 497 of 2017**

Monday, this the 14<sup>th</sup> day of January 2019

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon'ble Air Marshal B.B.P. Sinha, Member (A)**

Smt. Satbiri W/o No.1060419L Late Ex. Sep. Ajaipal Singh  
S/o Sri Ram Sarup Singh, R/o Village Rijhora,  
Post Office Rahmapur, District Buland Shahar (U.P.)

..... Applicant

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

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi.
3. Officer-in-Charge, Defence Security Corps, Records.
4. PCDA (Pension), Allahabad.

..... Respondents

Ld. Counsel for the  
Respondents

**:Shri Shailendra Sharma Atal**,  
Central Govt Counsel.

**ORDER****“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”**

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

- “(i) To direct the respondents to grant 20% disability pension to the applicant, wef 30 Nov 2009, that is from the date of his discharge from the service.*
- “(ii) To direct the respondents to round of this disability pension to 50% as per the Policy on the subject and thereafter pay arrears of pension with interest.*
- “(iii) Any other relief which the Hon’ble Tribunal may consider appropriate may be granted in favour of the applicant.*
- “(iv) Cost of the application be awarded to the applicant.”*

2. Brief facts of the case are that the husband of the applicant was enrolled in the Indian Army on 28.05.1977 and was discharged from service on 30.11.1994 on compassionate ground, on his own request in medical category SHAPE-1 and he was granted service pension. The husband of the applicant was re-enrolled in Defence Security Corps (DSC) on 13.11.1999 and was discharged on 30.11.2009 in low medical category P-3 (Permanent). The Release Medical Board (RMB) of the husband of applicant opined his disability **“CORONARY ARTERY DISEASE (CAD) (SVD) RAC IWMI THROMBOLYSED SEVERE**

**LV DYS FUNCTION”** to be neither attributable to nor aggravated by military service with disability @50% for life, though in the Original Application the applicant has wrongly mentioned the disability @ 20% for life. The claim of the husband of the applicant for disability pension was rejected by the respondents vide letter dated 19.03.2010. Thereafter the husband of the applicant preferred Appeal for grant of disability pension, which was also rejected by the respondents vide letter dated 04.01.2011. Being aggrieved, the applicant has approached this Tribunal for grant of disability pension. Delay in filing the O.A. has been condoned by this Tribunal on 02.11.2017,

3. During the pendency of instant Original Application the husband of the applicant has expired on 20.11.2017, hence, she has been substituted as applicant.

4. Learned counsel for the applicant pleaded that at the time of enrolment, the husband of 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 entry in service. Learned Counsel for the applicant pleaded that since the disease was contacted during the service of husband of the applicant, his disability should be considered as attributable to and aggravated by military service. He further pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the husband of

the applicant be granted disability pension. He relied upon the judgment of Hon'ble Apex Court in the case of ***Sukhwinder Singh vs Union of India & Ors***, (2014) 4 SCT 163 (SC) and pleaded that the husband of the applicant is entitled to grant of disability pension. He also submitted that as per Government Order dated 31.01.2001 the disability pension be rounded off from 50% to 75%.

5. Rebutting arguments of Ld. Counsel for the applicant, Ld. Counsel for the respondents pleaded that husband of the applicant was enrolled in DSC for initial period of 10 years. Those who are recommended and selected for further retention may, if willing be given 5 years extension at a time or till they reach the age of superannuation i.e. 55 years subject to fulfilment of eligibility criteria like discipline, medical category, age and ACR e.t.c. The husband of the applicant was downgraded to Low Medical Category (P3) permanent on 07.01.2009 which is unacceptable medical category for grant of further extension, hence he was discharged from DSC service on 30.11.2009 on completion of initial terms of engagement after rendering 10 years and 18 days of qualifying service in terms of Govt of India, Min of Def letter dated 05.12.1981.

6. Learned counsel for the respondents further pleaded that Release Medical Board of the husband of the applicant had opined the disability of the husband of the applicant as neither attributable to nor aggravated by military service and had assessed the

percentage of disablement @ 50% for life but Net Assessment qualifying for disability pension with duration was assessed as Nil for life. He further pleaded that as per policy laid down vide para 81 (a) of Pension Regulations for the Army 2008 (Part 1), service personnel who are invalided out from service on account of a disability which is attributable to or aggravated by service may be granted a disability pension consisting of service element and disability element. In the instant case, the husband of the applicant was discharged from DSC service on completion of his initial terms of engagement hence, he is not entitled for the grant of disability pension. He pleaded that as per provisions of Para 53 (a) of Pension Regulations for the Army 2008 (Part-1) which stipulates 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 to 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. Since Net Assessment qualifying for disability pension with duration of the husband of the applicant was assessed as Nil for life, he was not granted disability pension and accordingly question of rounding off of disability element does not arise. As per para 7.2 of govt of India, Min of Def letter dated

31.01.2001, broad banding of disability element is extended to those individuals who were invalided out of service before completing their terms of engagement of service. Therefore the disability pension and its rounding off is inadmissible to the husband of the applicant and his claim has rightly been rejected.

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. The questions which need to be answered are of three folds :-

- (a) Whether the disability of husband of the applicant is attributable to or aggravated by DSC service?
- (b) Whether the husband of the applicant is entitled for grant of disability pension or not and if yes from which date?
- (c) Whether the husband of the applicant is entitled for the benefit of rounding off of his 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 husband of the applicant only by endorsing that the disability "CORONARY ARTERY DISEASE (SVD) RAC IWMI THROMBOLYSED SEVERE LV DYS FUNCTION" to be neither attributable to nor aggravated (NANA) by military service without giving any meaningful reason. Moreover, in Release Medical Board Proceedings on page 5 Para 2 against the question "**Did the disability exist before entering service?**" – "**No**" has been answered. The applicant's husband was enrolled in DSC on 13.11.1999 and disability first time was detected on 24.11.2005 i.e. after more than 05 years of DSC service. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the husband of the applicant in view of *Dharamvir Singh vs Union of India & Ors* (supra) and the disability of the husband of the applicant should be considered as aggravated by DSC 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 10<sup>th</sup> 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.”*

11. It is observed that the larger Bench of Armed Forces Tribunal, Principal Bench, New Delhi vide order dated 01.12.2017 passed in O.A. No. 1439 of 2016 ***Ex Sergeant Girish Kumar vs. Union of India and others***, had enunciated that Armed Forces personnel who retired pre 01.01.1996 will be entitled to the arrears of broad banding with effect from 01.01.1996 and in case of those retired on or after 01.01.1996 will be entitled to arrears with effect from the date of their retirement. It was argued that in view of the decision of the Larger Bench in the case of ***Ex Sergeant Girish Kumar (supra)***, the husband of the applicant is entitled to the benefit of rounding off and payment of arrears of disability pension from the date of his superannuation, i.e. 30.04.2002. In this regard, it may be noticed that Hon'ble the Supreme Court vide order dated 13.07.2018 passed in Civil Appeal Diary No 21811 of 2018, ***Union of India through its Secretary & ors vs. Sgt. Girish Kumar*** has stayed the decision of the Larger Bench in the case of ***Ex Sergeant Girish Kumar (supra)***. For convenience sake, order dated 13.07.2018 is excerpted as under:

*“Leave to appeal granted.  
 Delay condoned.  
 Issue notice.  
 In the meanwhile, there shall be a stay of operation of the impugned judgment and order passed by the Armed Forces Tribunal.  
 However, learned Additional Solicitor General says that he will advise the Union of India to release the disability pension for a period of three years prior to the date of filing the original application before the Tribunal or the date of retirement as may be applicable.”*

12. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

*“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”*

13. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off of disability pension from 50% to be rounded off to 75% for life which may be made applicable to the husband of the applicant from three preceding years from the date of filing of the O.A.

14. In view of the above, the Original Application No 497 of 2017 deserves to be allowed, hence **allowed**. Husband of the applicant was entitled to disability pension w.e.f. the date of his discharge but the applicant has approached this Tribunal with long delay so the arrears of disability pension and benefits of rounding off to

75% shall be restricted w.e.f. three years prior to the date of filing of this Original Application till the date of death of husband of applicant. The date of filing of this Original Application is 21.12.2016. The respondents are 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 @ 9% per annum till actual payment.

No order as to costs.

**(Air Marshal B.B.P. Sinha)**  
**Member (A)**

**(Justice S.V.S. Rathore)**  
**Member (J)**

Dated : January, 2019

UKT/AKD/-