

**Court No. 1**

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

**Original Application No. 592 of 2023**

Wednesday, this the 3<sup>rd</sup> day of January, 2024

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

Capt (TS) Pankaj Rastogi (03557H) (Retd), S/o Late Bankey Behari Rastogi, Flat No. B - 904, Indraprastha Estate, 2-3 Faizabad Road, Opposite IT College, Lucknow – 226007.

..... Applicant

Ld. Counsel for the Applicant: **Shri Raj Kumar Mishra, Advocate  
Ms. Upasna Mishra, Advocate  
Shri Kapil Sharma, Advocate**

Versus

1. The Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. The Chief of the Naval Staff, IHQ of MoD (NAVY), South Block, New Delhi - 110011.
3. The Commodore (P&A), Dte of Pay & Allowances, Room No. 108 IHQ MoD (Navy) Naval Headquarters, Talkatora Stadium, New Delhi - 110011.
4. Principal Controller of Defence Account (Pension), PCDA (P), Draupadi Ghat, Allahabad - 211014.

..... Respondents

Ld. Counsel for the Respondents: **Shri Arun Kumar Sahu,  
Advocate  
Central Govt. Standing Counsel.**

**ORDER (ORAL)**

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

*“(a) To issue / pass an order or direction of appropriate nature to the respondents to set aside / quash the impugned order dated 21.06.2022 and RMB dated 23.05.2022.*

*(b) To issue / pass an order or direction of appropriate nature to the respondents directing to grant disability pension from the date next to the date of discharge i.e., 01.04.2023 and interest thereon at the rate of 18% per annum.*

*(c) Issue / pass an order or direction to the respondents to round off the disability pension from 33.5% for life to 50% for life in terms of benefit of broad- banding as held in Ram Avtar’s case.*

*(d) Issue / pass any other order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.*

*(e) Allow this application with exemplary costs.”*

2. Brief facts of the case are that applicant was commissioned in the Indian Navy on 01.01.1990 and was retired from service on 31.03.2023 (AN) in low medical category after serving 33 years and 03 months of service. The Release Medical Board

(RMB) assessed his disabilities (i) **“PRIMARY HYPERTENSION (OLD) ICD I-10.0, Z-09.0”** @ 30% for life and (ii) **“DYSLIPIDAEMIA (ICD E 78.0)”** @ 5% for life. The composite assessment of disabilities are @ 33.5% whereas the net assessment qualifying for disability pension has been assessed **NIL** for life. The RMB has opined that all the disabilities of the applicant were neither attributable to nor aggravated by military service (NANA). The applicant’s claim for grant of disability pension was rejected by the respondents vide order dated 21.06.2022. Thereafter, applicant submitted first appeal dated 06.10.2022 which has also been rejected by the Respondents vide order dated 02.02.2023. Being aggrieved with denied by disability pension, the instant Original Application has been filed.

3. Learned Counsel for the applicant submitted that applicant was medically fit when he was commissioned in the service and any disability not recorded at the time of commission should be presumed to have been caused subsequently. The action of the respondents in not granting disability pension to the applicant is illegal. In this regard, he relied on the decision of the Hon’ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India and others***, (2013) AIR SCW 4236 and ***Sukhvinder Singh vs. Union of India & Others*** (2014 STPL (Web) 468 SC and submitted that for the purpose of determining attributability of

the disease to military service, what is material is whether the disability was detected during the initial pre-commissioning medical tests and if no disability was detected at that time, then it is to be presumed that the disabilities arose while in service, therefore, the disabilities of the applicant may be considered as aggravated by service and applicant be granted disability pension @ 33.5% and rounded off to 50%.

4. On the other hand, learned counsel for the respondents submitted that though the RMB had assessed the disabilities of the applicant (i) Primary Hypertension @ 30% and (ii) Dyslipidemia @ 5% for life but it opined that the disabilities are NANA and net assessment qualifying disabilities is NIL. He pleaded that Primary Hypertension is a multi factorial disorder with a genetic preponderance. It may be held aggravated if its onset is in Field/HAA/ CI Ops. Disability Dyslipidemia (Old) is also opined as NANA being a metabolic disease not connected with stress and strain of military duties, with inherited enzyme deficiency and excessive intake of saturated fats with no causal connection to service. In the instant case, onset of disabilities occurred while serving in peace station. As such, his claim for disability pension has rightly been rejected by the respondents. He submitted that the instant Original Application does not have any merit and the same is to be dismissed.

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 of two folds:-

- (a) Whether the disabilities of the applicant are attributable to or aggravated by Navy 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 5 O.A. No. 726 of 2023 NK. Satya Prakash (Retd.) 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)].*

*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. After going through the opinion of the medical board, we have noted that all the disabilities have been opined as neither attributable to nor aggravated by the RMB.

8. We have noticed that the only reason for declaring the diseases as not attributable are that these disabilities originated in peace area (Kochi) and has no close time association with

Fd/CI Ops/HAA tenure. However, on further scrutiny, we have observed that the disability Primary Hypertension was detected in Feb 2012, after about 21 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring this disease as not attributable is very brief and cryptic in nature and do not adequately explain the denial of attributability. We don't agree with the view that there is no stress and strain of service in military stations located in peace areas. Hence, we are inclined to give benefit of doubt in favour of the applicant. Thus, we are of the considered opinion that disability i.e. "Primary Hypertension" @ 30% for life is to be considered as aggravated by military service because stress and strain of military service in line with the law settled on this matter by the Hon'ble Apex Court in the case of ***Dharamvir Singh*** (supra). So far as other disability i.e. Dyslipidemia which was found @5% by the RMB is concerned, the disease is considered a metabolic disorder which is mostly due to enzyme deficiencies and not related to the onset or cause of disease to military service. Hence, this disease does not qualify for disability element.

9. 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.”*

10. 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(01)/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability pension @ 30% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge.

11. In view of the above, the Original Application No. 592 of 2023 deserves to be partly allowed, hence **partly allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The disability (i) Hypertension of the applicant is held as aggravated by Navy Service. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life from the next date of his discharge. 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

12. No order as to costs.

13. Departmental Representative present on behalf of the respondents 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)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated: 03 January, 2024  
rk/-