

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 126 of 2021**Thursday, this the 15th day of July, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 13696027K, Ex Havildar, Sur Sari Charan Mishra, S/o Ram Pherey Mishra, R/o Village – Khani Kalapur, P.O.- Pali, District – Hardoi, State- Uttar Pradesh.

..... Applicant

Ld. Counsel for the : **Shri Bhanu Pratap Singh Chauhan,**
Applicant **Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ MOD (Army), South Block, New Delhi.
3. Addl Dte Gen of Personnel Services/AG/PS-4 (Imp-II), Adjutant General’s Branch, IHQ of MoD (Army), Room No-10, Plot No – 108 (West), Brassey Avenue, Church Raod, New Delhi-110011.
4. Records, Brigade of the Guards, PIN- 900746, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad – 211014.

.....**Respondents**Ld. Counsel for the : **Shri Amit Jaiswal,**
Respondents. **Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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 the order dated 20.04.2017 against the rejection of disability element of disability pension claim. (Annexure A-1).*
- (b). *To issue/pass an order or directions to the respondents to grant of disability element of disability pension @ 40% as per from date of discharge i.e. 01.06.2016 and benefit of “Rounding off” the disability element of disability pension @ 40% to 50% w.e.f. 01.06.2016 in light of Hon’ble Apex Court Cases i.e. “Sukhvinder Singh Vs Union of India” (Supra) and “Union of India Vs Ram Avtar” along with @ 12@ interest read with Para 19 of Chapter VI of Guide to Medical Officers (Military Pensions) amendments 2008.*
- (c) *to issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant against the respondents.*
- (d) *To allow this original application with costs.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 23.08.1995 and was discharged on

31.05.2016 (AN) before completion of his terms of engagement after rendering 20 years of service in Low Medical Category under the provisions of Rule 13 (3) III (a) (i) of Army Rule 1954. At the time of discharge, Release Medical Board (RMB) held at Military Hospital, Jodhpur on 12.02.2016 assessed his disability "**CLOSED GLOBE INJURY (RT) EYE EFFECTS OF**" @ 15%-19% for life and opined the disability as attributable to military service. Applicant was granted service pension from the date of retirement. The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 20.04.2017 as the disability was assessed less than 20%. 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, he 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. He submitted that the applicant sustained injury while proceeding on duty hence Release Medical Board has conceded it as aggravated by service. He further submitted that claim for the grant of disability pension was wrongly rejected on the ground of disability percentage being less than 20%. Moreover, in Guide to Medical Officers (Military Version), 2002, it has been stated that loss of vision in any eye shall be treated 20%. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as

such the applicant be granted disability pension as well as arrears thereof and its rounding off to 50%. He also relied upon the judgment of the Hon'ble Apex Court in the case of **Sukhvinder Singh vs Union of India & Ors**, Civil Appeal No. 5604 of 2010, decided on 25.06.2014 and pleaded that he is entitled to grant of disability pension and its rounding off.

4. Rebutting arguments of the applicant, Ld. Counsel for the respondents submitted that applicant is getting service element of pension for his 20 years of service in army. He further submitted that the disability pension claim of the applicant was rightly rejected because Release Medical Board has assessed the degree of disablement between 15 -19% which is less than the minimum requirement of 20% for the grant of disability pension, therefore, the disability pension is inadmissible to the applicant.

5. We have heard learned counsel for the parties and perused the record. The questions which needs to be answered are of three folds:-

- (a) Whether the applicant is entitled to disability pension despite disability being less than 20%?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. In so far as disability which is shown to be assessed as less than 20% is concerned, various Tribunals and Courts have found

that the assessment of disability to the tune of 15-19% itself is a doubtful assessment and cannot be final for the simple reason that there is no barometer which can assess the disability percentage to the extent of 1% and therefore, the percentage of disability which has been assessed as 15-19% may be 20% also and there may be variation of at least two percent plus also. In case of doubt as per the Pension Regulations, the benefit should always be given to the applicant. Probably because of this reason the Union of India must have issued the order dated 31.01.2001 to provide for giving the benefit of rounding off the disability pension to 50% to the persons who are having less than 50% of the disability.

7. The law is settled that even if disability percentage is less than 20%, it would stand rounded off to 50% (in cases after their superannuation). The case in point relied upon by the Applicant is **Sukhhvinder Singh Vs. Union of India**, reported in (2014) STPL (WEB) 468 SC. In para 9 of the judgment Hon'ble Apex Court has held as under:-

“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined.....”

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. The initial presumption that the applicant was physically fit and free from any disease and in sound physical and mental condition at the time of entering into service remains unrebutted. 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. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar and Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012

decided on 10 December, 2014. Hence the applicant is eligible for the benefit of rounding off.

11. In view of the above, the Original Application deserves to be allowed, hence **allowed**. The impugned order rejecting claim for grant of disability element is set aside. The applicant is already in receipt of service element hence respondents are directed to grant disability element of the pension @ 15% -19% deemed to be 20% for life to the applicant, which shall stand rounded off to 50% for life from the date of discharge. The entire exercise shall be completed by the respondents within four months from the date of production of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 8% to the applicant on the amount accrued till the date of actual payment.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated : 15 July, 2021

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