

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 5 of 2021**

Tuesday, this the 27th day of July, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

(Army No. JC-811802L) Sub. Vishnu Dutta, Son of Ram Prakash Awasthi, Resident of Shakoopur Rewtapur Road, Near Primary School, Nilmatha, Lucknow, U.P., PIN-226002.

..... Applicant

Ld. Counsel for the Applicant : **Shri Pankaj Kumar Shukla**, Advocate and
Shri Deerendra Kumar Agnihotri, 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. OIC Records, Intelligence Corps, PIN-908793, C/o 56 APO.
4. PCDA (Pension), Draupadi Ghat, Allahabad.

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri Ashish Kumar Singh**,
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 or directions to set-aside/quash the order dated 05.02.2019 and letter no. B/40502/515/2019/AG/PS-4(Imp-II) Dated 19.08.2019 passed by respondent.*
- B. *To issue/pass an order or directions to the respondents to grant disability element of disability pension @64% for the disease 3 [Primary Hypertension (I10)] and 4 (Diabetes Mellitus (Type – 2) [E-11.6] from the date of discharge i.e. 01.04.2019 along with 12% interest on arrear in light of Hon'ble Apex Court judgment.*
- C. *To issue/pass an order or directions to the respondents to grant benefit of rounding off disability pension @64% to @75% for the disease 3 [Primary Hypertension (I10)] and 4 [Diabetes Mellitus (Type-2) (E-11.6)] from the date of discharge i.e. 01.04.2019 along with 12% interest on arrear in light of Hon'ble Apex Court judgment and Government letter dated 31.01.2001.*
- D. *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.*
- E. *To allow this original application with costs.*

2. Briefly stated, applicant was enrolled in the Indian Army on 02.03.1991 and was discharged on 31.03.2019 (Afternoon) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item I (i)(a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at

Military Hospital, Mathura C/o 56 APO on 14.12.2018 assessed his disabilities (a) '**MEDIAL AND LATERAL MENISCUS TEAR (RT) KNEE (OPTD) (S83.2)**' @20%, (b) '**OSTEOCHONDRITIS DISSECANS PATELLA & MEDIAL FEMORAL CONDYLE (RT) KNEE (M93 26)**' @Nil, (c) '**PRIMARY HYPERTENSION (I10)**' @30%, (d) '**DIABTETES MELLITUS TYPE – 2 (E11.6)**' @20% and (e) '**FRACTURE LATERAL MALLELOLUS (RT) (S82 62)**' @20%, **Composite disabilities @64%** and opined the disabilities Nos. (a), (b) and (e) to be **attributable to service** and disabilities Nos. (c) and (d) to be neither attributable to nor aggravated (NANA) by service. As such Net Assessment Qualification for Disability Pension has been assessed @40% for life. Accordingly, the applicant was granted disability element of disability pension @40% for life which has been rounded off to @50% for life. The applicant's claim for grant of disability element of disability pension for rest diseases i.e. (c) and (d) was rejected vide letter dated 05.02.2019. The applicant preferred First Appeal which too was rejected vide letter dated 19.08.2019. 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. All the diseases of the applicant were contacted during the

service, hence they all 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 for the diseases Nos. (c) and (d) also as well as arrears thereof, as applicant is also entitled to disability pension and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents conceded that applicant's disabilities Nos. (a), (b) and (e) have been opined as attributable to service of which net assessment was @40% for life as such applicant was granted disability element of disability pension @40% for life which was rounded off to @50% for life and applicant is in receipt of same. He further contended that disabilities Nos. (c) and (d) of the applicant have been regarded as NANA by the RMB, hence applicant is not entitled to disability element of disability pension for these 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 of two folds:-

- (a) Whether the disabilities Nos. (c) and (d) of the applicant are also 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 for the aforesaid disabilities also?

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 disabilities Nos. (c) '**PRIMARY HYPERTENSION (I10)**' and (d) '**DIABTETES MELLITUS TYPE – 2 (E11.6)**' are neither attributable to nor aggravated (NANA) by service on the ground of onset of these disabilities in September, 2017 while posted in Peace location (Yol Cantt, 9 CISU, Himanchal Pradesh), therefore, applicant is not entitled to disability element of disability pension for these disabilities. 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 these disabilities 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 enrolled in Indian Army on 02.03.1991 and the disabilities Nos. (c) and (d) have started after more than 26 years of Army service i.e. in September, 2017. 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 Nos. (c) and (d) of the applicant should also be considered as aggravated by military service.

8. 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.”

9. The composite disabilities of the applicant have been assessed @64% for life by the RMB. In view of the decision of Hon'ble Supreme Court in the case of **Union of India and Ors vs Ram Avtar & ors (supra)**, we are of the considered view that benefit of rounding off of disability element of disability pension @64% for life to be rounded off to 75% for life may be extended to the applicant from the date of discharge.

10. In view of the above, the Original Application No. 5 of 2021 deserves to be allowed, hence **allowed**. The impugned orders dated 05.02.2019 and 19.08.2019, annexed as Annexure Nos. 1 and 2 with Original Application, are set aside. The disabilities Nos. (c) '**PRIMARY HYPERTENSION (I10)**' and (d) '**DIABTETES MELLITUS TYPE – 2 (E11.6)**' of the applicant are also held as aggravated by Army Service. The other disabilities i.e. (a), (b) and (e) have already been held attributable to service by the RMB and applicant is getting disability element of disability pension @40% for life which has been rounded off to 50% for life. The composite assessment of all the disabilities is 64% for life. As such the applicant is entitled to get disability element @64% for life which would be rounded off to 75% from the date of his discharge. The respondents are directed to grant disability element to the applicant @64% for life which would stand rounded off to 75% for life from the date of 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

11. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 27 July, 2021

AKD/-