

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 231 of 2023****Thursday, this the 27th day of July, 2023****“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Army No. 7781033W Ex Nk (MACP Hav) Ratan Kumar Dwivedi
 S/o Janardan Dwivedi
 R/o H. No. 590P/1231, Meera Vihar Colony, PO – Sanjay Gandhi,
 Tehsil – Sarojini Nagar, Distt – Lucknow (UP) – 226014

..... Applicant

Ld. Counsel for the : **Mohd. Zafar Khan**, Advocate
 Applicant

Versus

1. Union of India, through Secretary Ministry of Defence (Army), south Block, New Delhi – 110010.
2. Chief of the Army Staff, IHQ of MoD (Army), south Block, New Delhi.
3. Officer in Charge Records/Senior Record Officer, Sena Police Corps Abhilekh Karyalaya, Corps of Military Police Records, PIN-900493, C/o 56 APO.
4. PCDA (Pension) Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Ram Saran Awasthi**, Advocate
 Respondents Central Govt. Counsel

ORDER

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 letter/order No. 7781033W/NE (D.Pen) dated 01 September 2022 passed by*

respondent no. 3 annexed as Annexure No. 1, after summoning the relevant original records.

To issue/pass an order or directions to the respondents to grant disability element of disability pension from date of discharge i.e. 31.08.2022 along with 12% interest on arrear in light of Hon'ble Apex Court judgment.

- B. To issue/pass an order or directions to the respondents to grant subsequently benefit of rounding off/broad banding off disability pension to the applicant from the date of discharge i.e. 31.08.2022 along with 12% interest on arrear in light of Hon'ble Apex Court judgment and Government letter dated 31.01.2001.*
- 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.*
- D. To allow this original application with costs.”*

2. Briefly stated, applicant was enrolled in the Indian Army on 12.01.2000 and discharged from service on 31.08.2022 in Low Medical Category under Rule 13 (3) Item III (i) of the Army Rules, 1954 during the extension period. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Bhopal in Feb. 2022, assessed his disabilities, (i) **'PRIMARY HYPERTENSION'** @ 30%, (ii) **'ALCOHOLIC LIVER DISEASE'** @ 20% (iii) **'OBESITY'** @ 05% and (iv) **'HARMFUL USE OF ALCOHOL'** @ 20% for life, Composite assessment @ 58% for life and opined the disabilities to be neither attributable to nor

aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 01.09.2022. The applicant preferred First Appeal which was kept under observation and not decided by the respondents. 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. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He placed reliance on the judgment of the Hon'ble Apex Court in **Dharamvir Singh vs. Union of India & Ors** (Civil Appeal No. 4949 of 2013) and **Sukhwinder Singh vs. Union of India** (Civil Appeal No. 5605 of 2010 decided on 25.06.2014) and pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that composite disabilities of the applicant assessed @ 58% for life have been regarded as NANA by the RMB, hence under the provisions of para 53 of Pension Regulations for the Army, 2008 (Part-1) applicant is not entitled to disability element of pension. 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 of the applicant are attributable to or aggravated by Military 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 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 first disability, '**PRIMARY HYPERTENSION**' is not related to stress and strain of military service and onset in peace area and for (ii) '**ALCOHOLIC LIVER DISEASE**' (iii) '**OBESITY**' and (iv) '**HARMFUL USE OF ALCOHOL**' disabilities, attributability and aggravation is not conceded as the diseases are related to personal habits of consuming alcohol and dietary habits and not related with military service, therefore, applicant is not entitled to disability element of 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 element of pension to applicant in respect of first disability (Primary Hypertension) 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 12.01.2000 and first disability has started after more than 21 years of Army service i.e. in the year 2022. 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 first disability (Primary Hypertension) of the applicant should be considered as aggravated by military service.

8. As far as attributability and aggravation of the disabilities No. 2 & 4 is concerned, we agree with the opinion of the RMB that both disabilities are NANA as both diseases are related with individual habits of consuming alcohol and there is no evidence of stress and strain of military service. In this regard, Para 6 of Chapter – V of Guide to Medical Officers (Military Pensions), 2002 provides that *“Compensation cannot be awarded for any disablement or death arising from intemperance in the use of alcohol, tobacco or drugs, or from sexually transmitted diseases, as these are matters within the member's own control. It follows that where alcohol, tobacco or drugs or sexually transmitted diseases have aggravated an*

accepted disability, it is necessary to exclude the effect thereof in assessing the disablement ascribable to service condition.”

9. As far as attributability and aggravation of disability No. 3 (Obesity) is concerned, this disease is related to dietary habits of the individual due to dietary indiscretion and lack of exercise and not related with military service, hence, we are agree with the opinion of the RMB that disability No. 3 (Obesity) is neither attributable to nor aggravated by service.

Thus, applicant is not entitled to disability element of pension for disabilities No. 2, 3 & 4 being NANA.

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 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."*

11. As such, in view of the decision of Hon'ble Supreme Court in the case of **Ram Avtar (supra)** as well as Government of India, Ministry of Defence letter dated 31.01.2001, we are of the considered view that benefit of rounding off of disability element of pension in respect of first disability (Primary Hypertension) @ 30% for life to be rounded off to 50% for life may be extended to the applicant from the next date of discharge from service.

12. In view of the above, the **Original Application No. 231 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 in respect of first disability (Primary

Hypertension) is set aside. The disability (Primary Hypertension) of the applicant is held as aggravated by Army Service. The applicant is entitled to get disability element for disability (Primary Hypertension) @ 30% 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 @ 30% 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.

13. No order as to costs.

14. Learned counsel for 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 Ravindra Nath Kakkar)
Member (J)

Dated : 27th July, 2023

SB