

Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No.1088 of 2023

Thursday, this the 04th day of July, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

No. 15341783K Ex. Spr. Kshatrapal Singh S/o Munnan Singh,
Resident of Village & Post – Khalispur, District – Ghazipur –
233001 (U.P).

..... Applicant

Ld. Counsel for the : **Shri R. Chandra**, Advocate
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence,
Government of India, New Delhi -110011.
2. Chief of the Army Staff, Integrated Headquarters, New Delhi
-110011.
3. The Officer -in- Charge, Bengal Engineering Group Records,
PIN -908779, C/o 56 APO.
4. The Chief Controller Defence Accounts, Draupadi Ghat,
Allahabad -14 (UP).

.....Respondents

Ld. Counsel for the :**Shri Arvind Kumar Pandey**, Advocate
Respondents. Central Govt. Standing Counsel

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”

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

- (I) *The Hon’ble Tribunal may be pleased to set aside the rejection order dated 13/10/2020 (Annexure No.A-1), order dated 26/07/2021 (Annexure No.A-2) and order dated 27/09/2022 (Annexure No.A-3).*
- (II) *The Hon’ble Tribunal may be pleased to direct the respondents to grant Disability Element with effect from 01/09/2020 (next date of discharge) along with its arrears and interest thereon at the rate of 18% per annum.*
- (III) *Hon’ble Tribunal may be pleased further to grant benefit of rounding of disability pension @50% in terms of Ram Avtar’s Case.*
- (IV) *Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Corps of Engineers (Bengal Engineers Group) of Indian Army on 06.02.2002 and discharged on 31.08.2020 in Low Medical Category before completion of terms of engagement under Rule 13 (3) Item III (v) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Armed Forces Clinic (AFC) New Delhi on 06.08.2020 assessed his disabilities (i) **‘SEIZURE DISORDER (G 40.0)’ @20%** and (ii) **‘NON ALCOHOLIC STEATO HEPATITIS (K75.81)’ @ 20%, composite disabilities @40% 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 13.10.2020. The applicant preferred First Appeal which too was rejected vide letter dated 26.07.2021 which was communicated to the applicant vide letter dated 17.09.2021. The applicant preferred Second Appeal which too rejected vide letter dated 27.09.2022 which was communicated to the applicant vide letter dated 21.10.2022. 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 diseases of the applicant were contracted during the service, hence they are attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of disability pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant @40% for life have been regarded as NANA by the RMB, hence as per Regulation 53(a) of the Pension Regulations for the Army, 2008 (Part-I) which

provides 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 of 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”* the applicant is not entitled to disability element of disability 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 element of disability pension?

6. On careful perusal of the documents, it has been observed that the applicant was enrolled on 06.02.2002, and the first disability/disease i.e. **'SEIZURE DISORDER (G-40.0)'** applicant was found to be suffering with in medical test first started in

January, 2006, i.e. within four years of joining the service. Therefore, we are of the opinion that since the first disability/disease has started in less than four years of his enrolment, hence by no stretch of imagination, it can be concluded that it has been caused by stress and strains of military service. Additionally, it is well known that mental disorders can escape detection at the time of enrolment, hence benefit of doubt cannot be given to the applicant merely on the ground that the first disease could not be detected at the time of enrolment. Since there is no causal connection between the first disease and military service, we are in agreement with the opinion of the RMB that the first disease is NANA.

7. Additionally, in Civil Appeal No 7672 of 2019 in ***Ex Cfn Narsingh Yadav vs Union of India & Ors***, decided on 03.10.2019, in para 20 of the Judgment, it has again been held by the Hon'ble Supreme Court that *"In the present case, clause 14 (d), as amended in the year 1996 and reproduced above, would be applicable as entitlement to disability pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the provision of grant of disability pension is a beneficial provision but, mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental*

disorder, therefore, it cannot be said that 'Paranoid Schizophrenia (F 20.0)' is presumed to be attributed to or aggravated by military service".

8. In view of the foregoing and the fact that the first disease manifested in less than four years of enrolment, we are in agreement with the opinion of RMB/IMB that the first disability/disease is NANA.

9. Further, the law on attributability of a disability other than mental disorder 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)."

10. 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 second disability '**NON ALCOHOLIC STEATO HEPATITIS (K75.81)**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in June 2019 while posted in Peace location (Delhi Cantt), therefore, applicant is not entitled to disability element of disability pension for the second disability. 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 the second disability 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 06.02.2002 and the second disability has started after more than 17 years of Army service i.e. in June 2019. 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 second disability of the applicant should be considered as aggravated by military service.

11. 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 theHon'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.”

12. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War

Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

13. 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.”

14. As such, in view of the decision of Hon'ble Supreme Court in the cases of **Union of India and Ors vs Ram Avtar &ors(supra)** and **Shiv Dass (supra)** as well as Government of India, Ministry of Defence letter No. 17(01)/2017/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

15. In view of the above, the **Original Application No. 1088 of 2023** deserves to be partly allowed, hence **partly allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension for the second disability, are set aside. The first disability i.e. '**SEIZURE DISORDER (G40.0)**' is held as NANA as has been opined by the RMB. The second disability i.e. '**NON ALCOHOLIC STEATO HEPATITIS (K75.81)**' of the applicant is held as aggravated by Army Service. The applicant is entitled to get disability element @20% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @20% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 08.09.2023. 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.

16. No order as to costs.

(Lt. Gen. Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 04 July, 2024

Ashok/AKD/-