

**Reserved  
Court No.1**

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

**Original Application No. 544 of 2018**

Tuesday, this the 26<sup>th</sup> day of March, 2019

**Hon'ble Mr. Justice SVS Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

Raju (No. 245668A Ex Nb/Ris OPR), Son of Shri Kallu Prasad, resident of House No. E-1/77, K.D.A. Colony, Daheli Sujampur, Shyam Nagar, P.O. COD, District Kanpur Nagar (Uttar Pradesh)- 208013.

.....Applicant

Ld. Counsel for : **Shri Yash Pal Singh, Advocate**  
the Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Additional Director General, Personnel Services/ Adjutant General's Branch, Integrated Headquarters of Ministry of (Army), Pin-900256, C/O 56 A.P.O.
3. Officer-in-Charge, Armoured Corps Records, Pin-900476, C/O 56 A.P.O.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat.

.....Respondents

Ld. Counsel for the : **Mrs Deepti Prasad Bajpai,**  
Respondents **Advocate**

**ORDER**

**“(Per Hon'ble Mr Justice SVS Rathore, 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) Issue/ pass an order or direction setting aside the recommendations of the Release Medical Board held in the month of December 2014 in so far as the same hold the disability of the applicant not connected with military service (Annexure No.1 to the Original Application); order/ letter dated 13.02.2015 passed/ issued on behalf of the Officer-in-Charge Records, Armoured Corps (Annexure No.2 to the Original Application); and order/ letter dated 18.07.2016 passed/ issued by the Appellate Committee on First Appeal rejecting the claim of the applicant for grant of disability pension (Annexure No.3 to the Original Application), after summoning the relevant original records; and consider case of the applicant and grant disability pension extending the benefit of rounding off from the date of discharge including arrears thereof with interest.

(b) Issue/ pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(c) Allow this Original Application with cost.

2. The undisputed facts, as averred by the learned counsel for applicant are that the applicant was enrolled in the Indian Army on 21.06.1994 in medically fit condition and was discharged from service with effect from 31.05.2015 under Army rule 13 (3) I (iii) (b) and 2(A) of the Army Rules, 1954 under medical category P<sub>2</sub>(Permanent) after his serving the Army for 20 years and 11 months. The medical board held before discharge considered the disability for '**DM TYPE-2 (E-11)**' as neither attributable to nor aggravated by military service (NANA) and assessed it as 20% for life. The case for disability pension was rejected by the respondents and communicated to the applicant vide letter dated 13.02.2015 of Officer-in-Charge, Records, Armored Corps as a case of NANA. The applicant preferred appeal against the said order on 01.09.2015, which was rejected by the Appellate Committee on first appeal vide letter dated 18.07.2016. Feeling aggrieved by

the rejection of disability claim by the respondents the applicant has preferred the present O.A.

3. The respondents have not filed counter affidavit in this case. However, learned counsel for the respondents while rebutting the arguments of the learned counsel for the applicant has submitted that since the applicant had completed the service of 20 years and 11 months and the Release Medical Board assessed the disability of the applicant for 'DM TYPE-2 (E-11)' @ 20% for life opining that the same is neither attributable to nor aggravated by Army service, he is not entitled to any disability pension. It has also been submitted that the claim of the applicant for disability pension was considered by the Competent Authority i.e. OIC Records as well as by the Appellate Committee on first appeal (ACFA) and it was held by both the authorities that in terms of Para-173A of Pension Regulations for the Army, 1961 (Part-I) he is not entitled to the same as the disability viz 'DM TYPE-2 (E-11)' from which he was suffering is neither attributable to nor aggravated by military service. Accordingly it has been pleaded by him that the grounds taken by the applicant are not sustainable and the applicant is not entitled to disability pension.

4. We have heard Shri Yash Pal Singh, Ld. Counsel for the applicant and Mrs Deepti Prasad Bajpai, Ld. Counsel for the respondents and perused the record.

5. The only ground put forth by the respondents for denial of disability pension is that his disability had been opined to be neither attributable to nor aggravated by Air Force Service by Release Medical Board.

6. The law on attributability of a disability has already been well settled by Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India and Ors** 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. The above judgment has been constantly followed and further explored by the Supreme Court in **Union of India and others v. Rajbir Singh** (CA No. 2904 of 2011 decided on 13.2.2015); **Union of India and others v. Manjit Singh** (CA No. 4357-58 of 2015 (arising out of SLP ( C) No. 13732-33 of 2015) decided on 12.5.2015; **Union of India v. Angad Singh** (CA No. 2208 of 2011 decided on 24.2.2015); **KJS Butter v. Union of India** (CA No. 5591 of 2006 decided on 31.3.2011; **Ex. Hav Mani Ram Bharia v. Union of India and others**, Civil Appeal No. 4409 of 2011 decided on 11.2.2016; OA 621 of 2014, **Bharat Kumar Vs UOI & Ors**; OA 1235 of 2014 **Hoshiar Singh Vs UOI & Ors.** and OA 480 of 2015 **Jasbir Singh Vs UOI & Ors.** and others Civil Appeal No. 1695 of 2016 (arising out of SLP (c) No. 22765 of 2011) decided on 11.2.2016 and also in a very recent judgment of Hon'ble Apex Court in the case of **Ex 6 GNR Laxman Ram Poonia vs. Union of India** (2017) 4 SCC 697. We have noted that the RMB has declared the disability of the applicant as NANA primarily on the ground that the onset of the disease is in peace area and not in a Field/ High Altitude Area/ Counter Insurgency Operation Area. We feel that such a discrimination in awarding attributability/ aggravation is unfair. It amounts to admitting that there is no stress and strain of military service in peace located military stations. Such an opinion is far from the truth and is detached from ground reality because it is well known that all over the world militaries believe in and practice the famous saying "THE MORE YOU SWEAT IN PEACE, THE LESS YOU BLEED IN WAR." Considering all issues we give benefit of doubt to the applicant and consider his disability as aggravated by military service.

8. In so far as the relief of rounding off is concerned, it is no more res integra. 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).

9. In ***Union of India and Ors v Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10<sup>th</sup> December 2014***) in which Hon'ble the Apex Court nodded in disapproval at 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. The judgment is very clear that the benefit of rounding off is also required to be extended to personnel with low medical category whose disability is attributable to military service and who has retired on attaining the age of superannuation or completion of his tenure of engagement. The relevant portion of the decision being relevant 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.*

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*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 a result of foregoing discussions, the O.A deserves to be allowed and is hereby **allowed**. The impugned orders passed by the respondents rejecting the claim of the applicant for disability pension are set aside. The disability of the Applicant is held as aggravated by military service and he is held entitled to disability pension from the date of discharge i.e. 01.06.2015. The disability of the Applicant which was assessed as 20% for life is rounded off to 50% for life. The Applicant shall be paid arrears of disability pension within four months of receiving a certified copy of this order. For default, the applicant shall be entitled to interest at the rate of 9% on the arrears aforesaid.

11. No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice S.V.S. Rathore)**  
**Member (J)**

Dated: March , 2019  
JPT