

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 51 of 2020

Wednesday, this the 17th day of March, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 6914203W Ex Nk Raj Narain Ram (Retd), C/o late Shri Munni Ram, R/o Vill- Gadiapur, PO- Gahmar, Tehsil – Gahmar, Distt- Ghazipur (u.P.)- 232327.

.....Applicant

Ld. Counsel for : **Shri Virat Anand Singh**
Applicant

Versus

1. Union of India and others through, The Secretary Ministry of Defence, South Block, New Delhi 110011.
2. Chief of the Army Staff, Integrated Head Quarters, Ministry of Defence (ARMY), DHQ PO, New Delhi - 110011.
3. CRO DSC Records, Jabalpur.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal,**
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 quash or set aside the Respondents findings as disability of applicant being NANA in RMB, rejection of FIRST APPEAL dated 04/12/2019 and 23/12/2019 (impugned orders).*
- (B) *To issue order or directions to the respondents to grant disability pension to the applicant for the disability he had, with effect from date of discharge (30/11/2017) with all consequential benefits including rounding off benefit in terms of Govt of India letter dated 31 Jan 2001 and judgment passed by Hon’ble Apex Court in case of Ram Avatar vs Uoi & Others.*
- (C) *Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*
- (D) *Allow this Application with cost.*

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Army on 08.02.1979 and was discharged from service on 29.02.1996 after rendering 17 years qualifying service for which he is getting service pension. Thereafter, the applicant was enrolled in Defence Security Corps (DSC) on 24.11.1998 and was discharged on 30.11.2017 under the provisions of Rule 13 (3) Item III (i) of Army rule 1954 after

rendering 19 years and 07 days qualifying service in Low Medical Category P2 (Permanent). At the time of retirement from service, the Release Medical Board (RMB) assessed his disabilities (a) **'TYPE 2 DM' @ 20%** (b) **'HYPERTENSION' @ 30%** and (c) **'CAD-TVD MILD LV DYSFUNCTION' @ 20%**, Composite disabilities @ 50% for life but opined the disability to be neither attributable to nor aggravated (NANA) by service (Reason in peace station). The applicant approached the respondents for grant of disability pension and its rounding off but the respondents have rejected the same vide order dated Feb 2018. His appeal for grant of disability pension was also rejected vide letter dated 04.12.2019. It is in this perspective that the applicant has preferred the present O.A.

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 contacted during the service, hence it is 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 is entitled to disability pension and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that applicant's all the disabilities @ composite 50% for

life have been regarded as NANA by the RMB, hence applicant is not entitled to disability pension. He further pleaded that since applicant was discharged from service on attaining the age of superannuation with effect from 30.11.2017 and RMB opined his disabilities to be NANA, hence his claim for grant of disability pension has correctly been rejected. 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. The questions which needs to be answered are of two folds :-

(a) Whether the disability of the applicant is attributable to or aggravated by Military Service?

(b) Whether the applicant is entitled for the benefit of rounding off of his 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. We have noted that the RMB has denied attributability to the applicant by endorsing that on set of diseases occurred in peace area. We are of the opinion that the reason given by RMB to declare the disability as NANA is unreasonable. This kind of reasoning doesn't reflect the complete truth on this matter. The applicant was enrolled in DSC on 24.11.1998 and this disability was for the first time detected in the year 2017 after more than 17 years of service. We are therefore of the considered opinion that considering the cryptic reason given for declaring disabilities as NANA, the benefit of doubt in these circumstances should be given to the applicant in view of the law settled by ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disabilities of the applicant @ 50% for life should 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. In view of the above, the **Original Application No. 51 of 2020** deserves to be allowed, hence **allowed**. The impugned orders passed by the respondents are set aside. The disabilities of the applicant are to be considered as aggravated by military service. The applicant is entitled to disability element of pension @ 50% for life to be rounded off to 75% for life from the date of discharge from DSC service. The respondents are directed to grant disability element @ 75% for life from the date of discharge from

service. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)

Member (A)

(Justice Umesh Chandra Srivastava)

Member (J)

Dated : 17 March, 2021

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