

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 983 of 2022**

Monday, this the 20th day of March, 2023

Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)

Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

No. 16015459M Ex Hav Ashish Kumar, S/o Sri Satish Chandra Singh Residence of Vill - Faridabad Tikri, P.O: Suketi, Distt – Fatehpur, Pin- 216221 (UP).

..... **Applicant**

Ld. Counsel for the Applicant : **Shri KP Datta, Advocate.**

Versus

1. Union of India, through its Secretary, Integrated HQs of MoD (Army), New Delhi - 110011.
2. The Addl Dte General of Pers, IHQ of MoD (Army), PIN - 900256, C/o 56 APO.
3. The Officer in Charge, Records RAJ RIF, PIN - 900106, C/o 56 APO.
4. The PCDA (P) Draupadi Ghat, Allahabad, PIN - 211014 (UP).

..... **Respondents**

Ld. Counsel for the Respondents : **Shri Shyam Singh,
Central Govt Counsel.**

ORDER (ORAL)

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

1. Counter affidavit filed by the respondents is taken on record.
2. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- A. To issue / pass an order or directions to set - aside / quash IHQ of MoD (Army) vide letter No. B/40502/481/2022/AG/PS-4 (1st Appeal) dated 12 Aug 2022, recd vide Records RAJRIF letter No. RNE/DP/16015459 dated 26 Aug 2022.
- B. To issue / pass an order or directions to grant him disability element and benefits of Rounding off to 50% from date of discharge wef 01.02.2022 in light of judgment of Hon’ble Apex Court, Orders of Hon’ble AFT in similar cases and Govt of India Policy letters.
- C. To issue/ pass an order or directions to grant him arrears along with interest @18% p.a. on arrears from date of discharge wef 01.02.2022.
- 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.”

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 13.03.2003 and after rendering 18 years, 10 months and 19 days service he was discharged from service on 31.01.2022 in low medical category ‘S1H1A1P2 (Permanent) E1 under Rule 13

(3) (v) of Army Rules 1954. Prior to discharge, Release Medical Board (RMB) was conducted and applicant's disability "**BETA THALASSEMIA TRAIT (D - 56 I)**" was assessed below 20% for life and considered as neither attributable to nor aggravated by military service. Disability element claim of the applicant was rejected by the respondents vide order dated 25.03.2022. Applicant submitted appeal against rejection of his disability element which was rejected vide order dated 12.08.2022. Being aggrieved, applicant has filed instant O.A. for grant of disability element.

4. Learned counsel for the applicant submitted that applicant was found fit in all respects at the time of enrolment in the Army and there was no note in his primary service documents with regard to any disease/disability. Therefore, disability suffered during service is attributable to military service. Learned counsel for the applicant also relied upon judgment of the Hon'ble Apex Court in the case of **Sukhvinder Singh vs. Union of India**, reported in (2014) STPL (WEB) 468 SC and submitted that if disability is not detected prior to the enrolment so disability to be deemed as attributable to service and pleaded that disability element be granted to the applicant and his disability of 10% should be treated to 20% and to be rounded off to 50% from the date of discharge in view of **Union of India and Ors vs. Ram Avtar & ors**, Civil Appeal No 418 of 2012, dated 10th December 2014 and Govt of India letter dated 31.01.2001.

5. Learned counsel for the applicant also relied upon judgment of AFT (RB) Chennai in OA No. 30 of 2017 ***Ex Sapper G. Jaganathan vs. Union of India & Ors***, decided on 09.02.2018 and submitted that applicant's case is squarely covered by this judgment and therefore, applicant be granted disability pension. Learned counsel for the applicant pleaded that due to disability applicant was invalided out from service before completion of terms of engagement, hence disability of the applicant be treated as attributable to and aggravated by military service and respondents be directed to grant disability element as 20% and round of to 50% for life.

6. On the other hand, learned Counsel for the respondents submitted that applicant is in receipt of service pension and has been denied the disability pension on the ground that his disability is assessed less than 20%. He further emphasised that competent authority has rightly rejected the disability pension claim in terms of Para 173 of Pension Regulations for the Army 1961, Part-1, Rule 14 of Entitlement Rule for Casualty Pensionary Awards, 1982 and Para 53 (a) of Pension Regulations for the Army, 2008 (Part I). Para 53 of Pension Regulations reads as under:-

“An individual released/retired/discharged on completion of term 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 percent or more.”

7. Learned counsel for the respondents further submitted that since the percentage of disability in this case is less than 20%, therefore, applicant is not entitled to disability pension and O.A. deserves to be dismissed.

8. We have heard learned counsel of both sides and found that moot question involved in this case is whether disability pension is payable to an incumbent whose disability has been considered as neither attributable to nor aggravated by service and has been assessed less than 20%?

9. For grant of invalid pension, the relevant portions of the Pension Regulations for the Army 1961 (Part I) and Entitlement Rules for Casualty Pension Award, 1982 are reproduced below:-

(b) Para 197 of Pension Regulations for the Army 1961 (Part- 1) - (Invalid Pension/Gratuity when Admissible)

197. Invalid pension/gratuity shall be admissible in accordance with the Regulations in this chapter to:-

(a) an individual who is invalided out of service on account of a disability which is neither attributable to nor aggravated by service;

(b) an individual who is though invalided out of service on account of a disability which is attributable to or aggravated by service, but the disability is assessed less than 20% and

(c) a low medical category individual who is retired/discharged from service for lack of alternative employment compatible with his low medical category.

“(d) Entitlement Rules for Casualty Pensionary Awards, 1982

4. Invaliding from service is necessary condition for grant of a disability pension. An individual who, at the time of his release under the Release Regulation, is in a lower medical category than that in which he was recruited, will be treated as invalided from service. JCOs/ORs & equivalentents in other services who are placed permanently in a medical category other than “A” and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalided out of service.

10. In view of the aforesaid discussions, we are of the considered view that provisions of Regulations 197 and 198 of the Pension Regulations for the Army 1961 (Part- 1) helps the applicant in as much as when a person is discharged in lower medical category than in which he was recruited, he would be treated to be invalided out of service. Admittedly, the applicant was recruited in a medically fit condition and was discharged in low medical category, thus, as per para 4 of Entitlement Rules, he is to be treated as invalided out of service. Since he has been considered as invalidated out of service he becomes entitled to the benefits accruing from the provisions of paras 197 and 198 of Pension Regulations and, therefore, he is to be considered entitled for invalid pension. Invalid

pension can be granted to an individual after 10 years of service and it is granted to an individual who is invalided out of service on account of disability which is neither attributable to nor aggravated by military service.

11. The law is settled that even if disability percentage is less than 20%, it would stand rounded off to 50% (in cases after their superannuation). The case in point relied upon by the Applicant is **Sukhvinder Singh Vs. Union of India**, reported in (2014) STPL (WEB) 468 SC. In para 9 of the judgment Hon'ble Apex Court has held as under:-

“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined.....”.

12. In case of doubt as per the Pension Regulations, the benefit should always be given to the applicant. Probably because of this reason the Union of India must have issued the order dated 31.01.2001 to provide for giving the benefit of rounding off the disability pension to 50% to the persons who are having less than 50% of the disability.

13. 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 Hon'ble 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)."*

14. The initial presumption that the applicant was physically fit and free from any disease and in sound physical and mental condition at the time of entering into service remains unrebutted. 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 of the applicant should be considered as aggravated by military service.

15. 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. Hence the applicant is eligible for the benefit of rounding off.

16. In the instant case the applicant was recruited in medically fit condition and was discharged in low medical category. His disability has been considered as neither attributable to nor aggravated by military service and it has been assessed as less than 10%. In view of the discussions made above, we are of the view that the applicant is entitled for the grant of invalid pension and Original Application deserves to be allowed.

17. In view of the above, the Original Application is **allowed**. The impugned order rejecting claim for grant of disability element is set aside. The applicant is already in receipt of service element hence respondents are directed to grant disability element of the pension @ 10% deemed to be 20% for life to the applicant, which shall stand rounded off to 50% for life from the date of discharge. The entire exercise shall be completed by the respondents within four months from the date of production of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 8% to the applicant on the amount accrued till the date of actual payment.

18. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 20 March, 2023
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