

Court No. 1

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

Original Application No 1091 of 2022

Tuesday, this the 28th day of March 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

No. 15155865-N Ex Sep (ACP Nk) Ajeet Singh Yadav, S/o Shri Shubba Yadav, R/O: 351, Tekanpura, Piprauli, Bada Gaon, Piprauli, District: Ballia, UP - 221715.

-----Applicant

Ld. Counsel for the Applicant: **Shri Ravi Kumar Yadav, Advocate**

Versus

1. The Union of India Rep by the Secretary, Govt of India Ministry of Defence, South Block, New Delhi - 110 011.
2. The Chief of the Army Staff, Integrated Headquarters of MoD (Army) Post: DHQ, New Delhi - 110 011.
3. The Officer - in – Charge, The Records Artillery Records, Nasik Road Camp, PIN - 908802, C/o 56 APO.
4. PCDA (P) (Army), Draupadi Ghat, Allahabad (UP) - 212114.

..... Respondents

Ld. Counsel for the Respondents : **Shri Alok Kumar Mishra,
Central Govt Counsel.**

ORDER (ORAL)

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

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

- “A. to Quash and set aside the Respondent No. 3 letter No. 15155865-N/DP-76346/Pen-2 dated 29 Jul 2019 (Annexure A-1 of instant OA & Impugned Order).*
- B. to issue/ pass an order or directions of appropriate nature to the respondents to grant disability element to the applicant from the next date of his discharge from service (01.04.2019) and to pay the arrears along with suitable rate of interest as deem fit by this Hon’ble Tribunal.*
- C. to grant the benefit of rounding off of the disability element from 40% to 50% and to pay the arrears along with suitable rate of interest as deem fit by this Hon’ble Tribunal.*
- D. Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicants.”*

2. The facts of the case, in brief, are that applicant was enrolled in the Indian Army on 09.03.2002 and was discharged from service on 30.03.2019 (AN) on fulfilling the conditions enrolment under item III of Rule 13 (3) of Army Rules 1954. The Release Medical Board (RMB) assessed his disability “**PERSISTENT DELUSIONAL DISORDER (F22)**’ @ 40% for life and opined that the disability of the applicant was neither attributable to nor aggravated by military service (NANA). The applicant’s claim for grant of disability pension was rejected by the respondents vide order dated 29.07.2019. Thereafter, applicant submitted a representation dated 18.02.2022 which has not been replied by the respondents and his appeal is still pending with the respondents. Being denied by disability pension, the instant Original Application has been filed.

3. Learned Counsel for the applicant submitted that applicant was medically fit when he was enrolled in the service and any disability not recorded at the time of enrolment should be presumed to have been caused subsequently. The action of the respondents in not granting disability pension to the applicant is illegal. In this regard, he relied on the decision of the Hon’ble Supreme Court in the case of **Dharamvir Singh vs. Union of India and others**, (2013) AIR SCW 4236 and **Sukhvinder Singh vs. Union of India & Others** (2014 STPL (Web) 468 SC and submitted that for the

purpose of determining attributability of the disease to military service, what is material is whether the disability was detected during the initial pre-commissioning medical tests and if no disability was detected at that time, then it is to be presumed that the disabilities arose while in service, therefore, the disabilities of the applicant are to be considered as aggravated by service and he is entitled to get disability pension @ 40% which may be rounded off to 50%.

4. On the other hand, learned counsel for the respondents has verbally submitted that though the RMB had assessed the disabilities of the applicant @ 40% for life but it opined that the disability as NANA. As such, under the provisions of Rule 173 of Pension Regulations for Indian Army 1961 (Part 1), his claim for disability pension has rightly been rejected by the respondents. He submitted that the instant Original Application does not have any merit and the same is to be dismissed.

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 disability of the applicant is 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. The applicant will also be eligible for the benefit of rounding off of disability from 40% to 50% for life in terms of the decision of the Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 decided on 10.12.2014).

8. Resultantly, the O.A. deserves to be allowed, hence allowed. The impugned order rejecting claim for grant of disability pension is set aside. The applicant's disability assessed @ 40% for life, is to be considered as aggravated by military service and his disability element of pension is to be rounded off from 40% to 50% for life from the next date of his discharge i.e. 31.03.2019. The respondents are

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

9. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 28th March, 2023
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