

**Court No. 1**

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

**ORIGINAL APPLICATION No. 790 of 2022**

Tuesday, this the 21<sup>st</sup> day of March, 2023

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

IC-47365A Colonel (Retd). Sanjay Srivastava, son of Late Gyan Prakash Srivastava D-1337, Indira Nagar, Lucknow.

**..... Applicant**

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

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi – 110011.
2. Additional Director General MP5 (B), Adjutant General Branch, IHQ, MoD, Wing No. 3, West Block III, R.K. Puram, New Delhi – 110066.
3. Principal Controller of Defence Accounts (Pension) Draupadighat, Prayagraj – 211014.

**.....Respondents**

Ld. Counsel for the Respondents. : **Mrs. Deepti P. Bajpai,  
Central Govt. Counsel**

**ORDER (ORAL)**

**“Per Hon’ble Mr. Ravindra Nath Kakkar, 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) Quash the rejection order of the First Appellate Committee rejection order bearing no. 13001/IC-47365A/A-4/AAD/MP-6(B)/139/2021/AG/PS-4(1<sup>st</sup> Appeal) dated 14.02.2022 rejecting the first appeal of the applicant.*

*(b) Quash the rejection order bearing no. 13004/IC-4-47365A/A-4/AAD/AG/MP (ORO) dated 27 May 2021 initially rejecting the claim of disability pension.*

*(c). Direct the respondents to pay the disability pension to the applicant @ 62% with effect from 30 Jun 2020 date of retirement of the applicant.*

*(d). To direct the respondents to grant the benefits of rounding of to the applicant as catered in the paragraph 7.2 of the Government of India, Ministry of Defence New Delhi policy letter No. 1(2)/97/I/D(Pen-C) dated 31 Jan 2001, effective from 01 Jan 1996.*

*(e). To issue any other order or direction considered expedient and in the interest of Justice and equity.*

*(f). Award cost of the petition.*

2. Briefly stated, applicant was commissioned in the Indian Army on 19.12.1987 and was retired on 30.06.2020 (AN) on completion of terms of engagement in Low Medical Category. At the time of discharge from service, the Release Medical Board (RMB) held at 158 Base Hospital on 17.03.2020 assessed his disabilities (a) **Impaired Glucose Tolerance @ 15% for life** (b) **Right Renal Calculus (PCNL+RIRS DONE), RT Renal Artery Pseudoaneurysm (Angioembolisati on done) (Old) @ 20% for life** (c) **Primary Hypertension @ 30%** and (d) **Gouty Arthritis @ 20%** and net composite assessment for all disabilities @ 62% for life. Disabilities (b) and (d) were assessed as Aggravated by military service. The disability element claim of the applicant was rejected vide letter dated 27.05.2021. He preferred appeal against rejection of disability element which was also rejected vide order dated 14.02.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant submitted that the applicant's disabilities (b) **Right Renal Calculus (PCNL+RIRS DONE), RT Renal Artery Pseudoaneurysm (Angioembolisati on done) (Old)** and (d) **Gouty Arthritis** were found to be attributable to military service by the RMB. He further pleaded that at the time of commissioning, 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 commissioning in Army. The diseases of the applicant were contracted during the service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, as such the applicant is entitled to disability element and its rounding off to 75%.

4. Ld. Counsel for the respondents conceded that disability element claim of the applicant was rejected on the ground that the disabilities of the applicant were considered as neither attributable to nor aggravated by military service, hence applicant was not granted disability pension. He submitted that the instant Original Application has no merit and is liable 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 Army 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. 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 disabilities are neither attributable to nor aggravated (NANA) by service on the ground of onset of disability took place while posted in Peace location, therefore, applicant is not entitled to disability element. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous army training training and associated stress and strain. The applicant was commissioned in army on 19.12.1987 and the disability has started after more than 25 years of army service i.e. in the year September

2012. 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 army 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 10<sup>th</sup> 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. 790 of 2022 deserves to be allowed, hence **allowed**. The impugned orders passed by the respondents rejecting disability element are set aside. The disability of the applicant is held as aggravated by Army Service. The applicant is entitled to get disability element @ 62% for life which would be rounded off to 75% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @ 62% for life which would stand rounded off to 75% for life from the next date of his discharge. 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

10. No order as to costs.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Ravindra Nath Kakkar)**  
**Member (J)**

Dated: 21 March, 2023  
UKT/