

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No. 782 of 2022**

Monday, this the 27th day of March, 2023

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

No. 5349923- H Ex Rfn Neeraj Thapa, of 476 ‘B’ DSC PI, New Delhi, Son of Shri Devendra Thapa, Resident of Village: KohluPani, Post Office: Nanda Ki Chauki, Tehsil: Vikas Nagar, District : Dehradun (Uttarakhand) - 248007

-----Applicant

Ld. Counsel for the Applicant: **Shri KKS Bisht, Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi - 110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi - 110011.
3. Officer - in- Charge Defence Security Corps Records, Cannanore, PIN - 901277, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj- 211014.

..... Respondents

Ld. Counsel for the Respondents :**Shri Arun Kumar Sahu,
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 issue order or direction to the respondents to summon and set-aside / quash the rejection orders passed by competent authorities.*
- “(b) To issue order or direction to the respondents to grant disability pension @ 20% from the next day of discharge i.e. from 01 May 2020.*
- “(c) To issue order or direction to the respondents to grant the benefits of rounding off of disability element from 20% to 50% from 01 May 2020.*
- “(d) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- “(e) Cost of the Original Application be awarded to the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Army on 20.09.1999 and was discharged on 30.09.2016. He was re-enrolled in DSC on 08.11.2016 and was invalidated out from service on 30.04.2020 in Low Medical Category under Rule 13 (3) Item III (ii)(a)(i) of the Army Rules, 1954. At the time of invalidated out from

service, the Invalidment Medical Board (MB) held at Base Hospital, Delhi Cantt. on 06.10.2016 assessed his disability '**CHRONIC CALCIFIC PANCREATITIS (OPTD)**' @ 20% for life which has net assessed qualifying for disability pension as **NIL** for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected. Being denied by disability pension, the instant Original Application has been filed.

3. Learned Counsel for the applicant pleaded that at the time of enrolment that the applicant was found mentally and physically fit for service in the DSC and there was no note in the service documents that he was suffering from any disease at the time of enrolment in DSC. Applicant was invalided out from DSC service within four years from the date of enrolment without completion of terms of engagement, hence his claim for grant of disability pension was wrongly rejected. 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. 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 applicant is also entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that applicant has been granted service pension for his services rendered in the army. He served in DSC for about four years and his disability was considered as neither attributable to nor aggravated by DSC service, hence he was denied for grant of disability pension. The disease diagnosed by the medical board was due to hereditary factor and not connected with military service, hence applicant was not granted disability pension. 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 Invalidation 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. In view of the settled position of law on attributability, we find that the IMB has denied attributability to the applicant only by endorsing that the disability "**CHRONIC CALCIFIC PANCREATITIS (OPTD)**" is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability first started on 22 January 2018, therefore, applicant is not entitled to disability pension. 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. The applicant was re-employed in DSC in medical fit condition, hence we are 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.

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 invalidated 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. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR445, Hon'ble Apex Court has observed:

"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

10. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from the next date of discharge. Date of invalidation/ discharge is 30.04.2020.

11. In view of the above, the **Original Application No. 782 of 2022** deserves to be allowed, hence **allowed**. The order rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The disability of the applicant is held as aggravated by Army Service. The applicant is entitled to get disability element @20% for life which would be rounded off to 50% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @20% for life which would stand rounded off to 50% for life from the next date of his discharge i.e. 30.04.2020. 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.

12. No order as to costs.

(Vice Admiral Atul Kumar Jain) (Justice Ravindra Nath Kakkar)

Member (A)

Member (J)

Dated : 27th March, 2023

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