

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
CIRCUIT BENCH AT NAINITAL**

ORIGINAL APPLICATION No.1119 of 2023

Tuesday, this the 12th day of March, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Maj. Gen. Sanjay Singh, Member (A)”**

No. 4188070M Ex. Hav. Devendra Singh, S/o Late Diwan Singh,
R/o Polysheet Tiger Colony Polysheet, Tehsil Haldwani, District
Nainital, Uttarakhand.

..... Applicant

Ld. Counsel for the : **Shri Kishore Rai**, Advocate
Applicant

Versus

1. Union of India, Ministry of Defence through its Secretary,
South Block, New Delhi-110001.
2. P.C.D.A. (P), Allahabad, Uttar Pradesh.
3. Addl. Dte. Gen. Personnel Services, Adjutant General’s
Branch, IHQ of MoD (Army), Room No 11, Plot No. 108
(West), Brassey Avenue, Church Road, New Delhi-110001.
4. Senior Record Officer, Records The Kumaon Regiment,
Ranikhet, Pin – 900473.

..... Respondents

Ld. Counsel for the : **Shri Neeraj Upreti**, Advocate
Respondents. Central Govt. Counsel
Assisted by Major M.S. Chauhan,
Departmental Representative

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”

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

- i. A direction to quash the order dated 19.12.2022 passed by respondent no. 4 (contained as Annexure No. 5 to this original application) or to*
- ii. A direction to grant the disability pension to the applicant from the date of his retirement i.e. 28.02.2021 along with rounding off to the tune of 50%.*
- iii. To summon the entire records of the applicant pertaining to computation of his disability pension.*
- iv. Any other relief to which the applicant is found entitled my also very kindly be granted to the applicant.*

2. Briefly stated, applicant was enrolled in The Kumaon Regiment of Indian Army on 13.02.1995 and discharged on 28.02.2021 in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Command Hospital (Northern Command) on 11.07.2022 assessed his disabilities (i) **‘PRIMARY HYPERTENSION (I-10)’ @ 30%** for life as neither attributable to nor aggravated (NANA) by service and (ii) **‘GOUT (M 10.9)’ @6-10%** for life as **aggravated by service**. The applicant’s claim for

grant of disability pension was rejected vide letter dated 06.04.2021. The applicant preferred petition dated 07.09.2022 which too was rejected vide letter dated 17.09.2022. The applicant preferred First Appeal dated 23.11.2022 which too was rejected vide letter dated 19.12.2022. It is in this perspective that the applicant has preferred the present Original Application.

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 first disease of the applicant was also contracted during the service, hence it is also attributable to and aggravated by Military Service. The second disease has already been opined by the RMB as aggravated by service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that although the second disability of the applicant has been regarded as aggravated by service by the RMB but it's degree of disablement is @6-10% which is less than 20% and the first disability of the applicant has been regarded as NANA by the RMB with net assessment of disability qualifying for disability

element as 10% for life, hence as per Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I) and Regulation 53(a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that *“An individual released/retired/ discharged on completion of terms 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% or more”* the applicant is not entitled to disability element of disability pension. He further submitted that the medical test at the time of entry is not exhaustive but it's scope is limited to broad physical examination. Therefore, it may not detect some dormant disease. Besides certain hereditary constitutional and congenital disease may manifest later in life irrespective of service conditions. The mere fact that a disease has manifested during military service does not per se establish attributability to or aggravated by military service. 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

records and we find that the questions which need to be answered are of two folds:-

- (a) Whether the first 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 element of 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 respondents have denied attributability to the applicant stating that the first disability '**PRIMARY HYPERTENSION (I10)**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in January, 2018 while posted in Peace location (Lucknow), therefore, applicant is not entitled to disability element of disability pension. However, considering the

facts and circumstances of the case, we are of the opinion that this reasoning of respondents for denying disability element of 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 military training and associated stress and strain of military service. The applicant was enrolled in Indian Army on 13.02.1995 and the first disability has started after more than 22 years of Army service i.e. in January, 2018. 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 first disability of the applicant should be considered as aggravated by military service.

8. Further, while neither the applicant nor the respondents has filed the Release Medical Board itself, the applicant has filed a Re-Categorization Medical Board proceedings which gives the 'Primary Hypertension' a degree of disability of 30%. The respondents have accepted the percentage of 'Primary Hypertension' in RMB and not contradicts the degree of disability. Further, we also observe that as per para 21 (f) of Chapter VII of the Amendment to Chapter VI & VII - Guide to Medical Officers (Military Pensions) the 'Primary Hypertension' cannot be assessed less than 30%.

9. In para 17 A (a) of Chapter VII of the Guide to Medical Officer (Military Pensions), 2002 the provision for composite assessment has been mentioned which reads as under :-

“17A. Composite Assessment

(a) Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment will be the arithmetical sum of their separate assessment. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping. There is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases. This is not correct.”

10. In view of above, since in the instant case first and second disabilities have entirely different functional effects, hence the composite assessment is to be the arithmetical sum of their separate assessment. Accordingly, we hold that the composite assessment of first and second disabilities is certainly above 20% for life which merits rounding off to 50%.

11. 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 noded 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 invalided 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.”

12. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

13. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Union of India and Ors vs Ram Avtar &ors(supra)*** as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension above @20% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge.

14. In view of the above, the **Original Application No. 1119 of 2023** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The first disability of the applicant is held as aggravated by Army Service. Be it mentioned

that the applicant's second disability has already been regarded as aggravated by service by the RMB. The applicant is entitled to get disability element above @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 above @20% for life which would stand rounded off to 50% 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.

15. No order as to costs.

16. Major M.S. Chauhan, Departmental Representative for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

(Maj. Gen. Sanjay Singh)
Member (A) Member (J)

(Justice Anil Kumar)

Dated : 12 March, 2024

AKD/-