

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 470 of 2023

Tuesday, this the 05th day of March, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vide Admiral Atul Kumar Jain, Member (A)”**

No. 130061-W, Ashish Kumar Gupta, Ex-ERA3 S/o Sri Mahesh Chandra Gupta, Resident of House No. 2C/128, Street – Awas Vikas Hanspuram Naubasta, PO – Naubasta, District – Kanpur Nagar, Uttar Pradesh-208021.

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Naval Staff, Ministry of Defence (Navy), Integrated Headquarters, Sena Bhawan, New Delhi-110011.
3. Logistic Officer In-charge, Naval Pension Office (NAVPEN), INS Tana Ji, Sion – Trombay Road, Mankhurd, Mumbai-400088.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad, Uttar Pradesh-211014.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Rajiv Pandey**, Advocate
Central Govt. Counsel
Assisted by **Maj. Danish Farooqui**,
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 :-

- (a) *To Quash or set aside the Impugned order No. PEN/600/D/LRDOI : 07/20211130061W dated 10 Aug 2021 passed by respondent, by which the claim for grant of disability pension in respect of applicant’s three disabilities has been rejected, contained as Annexure 1 to this Original Application.*
- (b) *To issue/pass an order or directions to opposite parties for grant of disability element of pension to the applicant @71.5% for life as assessed by RMB as composite assessment, from the next date of his discharge i.e. from 01.08.2021 by holding disabilities as attributable to and aggravated by military service and further round it off to 75% by giving the benefit of Govt. of India, Ministry of Defence letter dated 31.01.2001.*
- (c) *To issue/pass an order or directions to opposite parties to pay arrear of disability element of pension along with 12% interest from the next date of his discharge i.e. from 01.08.2021 till it is actually paid.*
- (d) *Any other relief which the Tribunal may deem fit and proper in the fact and circumstances of the case in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Navy on 02.08.2001 and was discharged from service on 31.07.2021 in Low

Medical Category. At the time of discharge from service, the Release Medical Board (RMB) held at Visakhapatnam/INHS, Kalyani on 03.02.2021 assessed his disabilities (i) '**PSORIATIC ARTHRITIS (ICD NO. M 07.03)**' @30% as **aggravated by service**, (ii) '**ACUTE SARCOIDOSIS (ICD NO. D86)**' @40% as neither attributable to nor aggravated (NANA) by service, (iii) '**DIABETES MELLITUS TYPE – 2 (ICD NO. E-11.0)**' @20% as NANA by service and (iv) '**MIGRAINE WITH AURA (ICD NO. G 43.1)**' @15%, **composite disabilities @71.5% for life**. Accordingly, the applicant was granted disability element of disability pension @30% rounded off to @50% for life for the first disability. But the applicant's claim for grant of disability element of disability pension for the second, third and fourth disabilities was rejected vide letter dated 10.08.2021. The applicant preferred First Appeal dated 13.09.2022 but of no avail. 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 Navy and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Navy. The second, third and fourth diseases of the applicant have been regarded as neither attributable to nor aggravated (NANA) by service. These diseases of the applicant were also contracted during the service, hence they are also attributable to and aggravated by Naval 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 75%.

4. On the other hand, Ld. Counsel for the respondents contended that the first disease of the applicant has been regarded as aggravated by service, hence, he was granted disability element @30% rounded off to 50% for life. He further contended that second, third and fourth disabilities have been regarded as NANA by the RMB, hence applicant is not entitled to disability element of disability pension for these disabilities in terms Regulations 101 and 105-B of Navy (Pension) Regulations, 1964. 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 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 second, third and fourth disabilities i.e. **'ACUTE SARCOIDOSIS (ICD NO. D86)'**, **'DIABETES MELLITUS TYPE - 2 (ICD NO. E-11.0)'** and **'MIGRAINE WITH AURA (ICD NO. G 43.1)'** of the applicant are also attributable to or aggravated by Naval Service?

- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of pension for the second, third and fourth disabilities also?

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 second, third and fourth disabilities '**ACUTE SARCOIDOSIS (ICD NO. D86)**', '**DIABETES MELLITUS TYPE – 2 (ICD NO. E-11.0)**' and '**MIGRAINE WITH AURA (ICD NO. G 43.1)**' are neither attributable to nor aggravated (NANA) by service on the grounds auto immune in nature, onset while serving in Peace location (New Delhi) and idiopathic in nature respectively, therefore, applicant is not entitled to disability element of disability pension for these disabilities. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability element of disability pension to applicant for these disabilities are cryptic, not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous Naval training

and associated stress and strain of Naval service. The applicant was enrolled in Indian Navy on 02.08.2001 and the second, third and fourth disabilities have started after more than 14, 10 and 07 years of Naval service i.e. in December, 2015, June, 2012 and February, 2009 respectively. 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 second, third and fourth disabilities i.e. '**ACUTE SARCOIDOSIS (ICD NO. D86)**', '**DIABETES MELLITUS TYPE – 2 (ICD NO. E-11.0)**' and '**MIGRAINE WITH AURA (ICD NO. G 43.1)**' of the applicant should also be considered as aggravated by Naval 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 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. 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.

10. 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 @71.5% for life to be rounded off to 75% for life may be extended to the applicant from the next date of his discharge.

11. In view of the above, the **Original Application No. 470 of 2023** deserves to be allowed, hence **allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension for the second, third and fourth disabilities is set aside. Be it mentioned that the applicant's first disability has already been regarded as aggravated by Naval service and the applicant is getting disability element @30% rounded off to 50% for life. The second, third and fourth disabilities i.e. "**ACUTE SARCOIDOSIS (ICD NO. D86)**", "**DIABETES MELLITUS TYPE – 2 (ICD NO. E-11.0)**" and "**MIGRAINE WITH AURA (ICD NO. G 43.1)**" of the applicant are also held as aggravated by Naval Service. The applicant is held entitled to get disability element @71.5% 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 @71.5% for life which would stand

rounded off to 75% for life from the next date of his discharge. The disability element of disability pension paid @50% from the next date of applicant's discharge shall be adjusted from the arrears. 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.

13. Major Danish Farooqui, 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.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 05 March, 2024

AKD/-