

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 1116 of 2024**

Monday, this the 17<sup>th</sup> day of March, 2025

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

Kuldeep Kumar Yadav (No. 8377373K Ex WO)  
 S/o Kedar Nath Yadav  
 R/o Lane No. 9, Swaraj Colony, Jail Road,  
 Tehsil & District – Banda, Uttar Pradesh-210001

**..... Applicant**

Ld. Counsel for the : **Shri Yashpal Singh**, Advocate  
 Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Additional Directorate General of Personnel Services, PS-8, Adjutant General’s Branch, Integrated Headquarters of Ministry of Defence (Army), Room No. 527, 5<sup>th</sup> Floor, ‘A’ Block, Defence Office Complex, K.G. Marg, New Delhi-110001.
3. Appellate Committee of First Appeal through its Chairman, Adjutant General’s Branch, Army Headquarters, DHQ PO, New Delhi – 110011.
4. Officer-in-Charge, Army Postal Service Records, PIN-900746, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj-211014.

**.....Respondents**

Ld. Counsel for the : **Ms. Anju Singh**, Advocate  
 Respondents. Central Govt. Standing Counsel

## **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) *Issue/pass an order setting aside the recommendation of the Invalidment Medical Board dated 28.10.2022 to the extent of holding the disability of the applicant as not connected with service; and the order/letter dated 24.02.2023 and order/letter dated 19.01.2024 passed/issued by the Army Postal Service Records and Appellate Committee on First Appeal respectively, rejecting the claim of the applicant for grant of disability pension for the disability ‘Autosomal Dominant Polycystic Kidney Disease’ (Annexure No. 1 and 2), after summoning the relevant original records.*
- (b) *Issue/pass an order directing the respondents to consider case of the applicant for grant of disability pension and provide the same from the date of discharge including arrears with interest; and also the benefit of rounding off and other consequential benefits of ex-serviceman.*
- (c) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (d) *Allow this Original Application with cost.”*

2. Briefly stated, applicant was initially appointed in Department of Posts (civilian government servant). He had voluntarily joined the Army Postal Service (APS) on 14.07.2010 on deputation basis for short term of engagement of 18 months and so long as required

in terms of Government of India, Ministry of Defence letter No. 90004/APS1A/1688 (D-Mov) dated 19.03.1985. The applicant was repatriated with effect from 30.11.2022 (Afternoon) in Low Medical Category in the rank of Warrant Officer at his own request on compassionate ground to his parent civil department i.e. Department of Posts as requested by the applicant vide his personal application dated 16.05.2016. Before repatriation, Release Medical Board held at Base Hospital, Delhi Cantt on 28.10.2022, assessed the applicant's disability '**AUTOSOMAL DOMINANT POLYCYSTIC KIDNEY DISEASE**' @20% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant has not been granted the disability element of pension vide letter dated 24.02.2023. The applicant preferred First Appeal dated 22.08.2023 which too was rejected vide letter dated 19.01.2024. 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 Postal Service and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army Postal Service. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Army Postal Service. He placed reliance on the judgment of the Hon'ble Supreme Court in the case of

**Dharamvir Singh vs. Union of India and Others**, reported in (2013) 7 SCC, 316 and 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 @ 20% for life duly rounded off to 50% in terms of the judgment of the Hon'ble Supreme Court in the case of **Union of India and Others vs. Ram Avtar and Others**, Civil Appeal No. 418 of 2012, decided on 10.12.2024.

4. On the other hand, Ld. Counsel for the respondents contended that the disability of the applicant @20% for life has been regarded NANA by service by the RMB and the applicant has been repatriated to his parent department at his own request on compassionate ground vide APS Records Repatriation Order dated 21.05.2022, hence, as per as per Govt. of India, Ministry of Defence, New Delhi letter dated 19.03.1985, Para 4 of Army Instructions 64/1976 and Para 53 (a) of the Pension Regulations for the Army, Part-1 (2008) 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 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*” and Para 7 of Appendix ‘C’ to IHQ of MoD (Army) letter dated 20.07.2006, the applicant is ineligible for grant of disability element of disability pension. He further submitted that the applicant diagnosed with the aforesaid disability in February 2021 while serving in Peace station (Mhow). There is no causal connection to military service. The disability of the applicant is NANA vide para 74, Chapter VI of GMO 2008 and therefore, applicant is not entitled for disability element of disability pension. She 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 four folds:-

- (a) Whether the disability of the applicant is attributable to or aggravated by Army Postal Service?
- (b) Whether the persons appointed on deputation in Army Postal Service are eligible for the grant of Disability Element of Disability Pension?
- (c) Whether the applicant is entitled to disability pension being a case of discharge on his own request?
- (d) 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 RMB has denied attributability to the applicant only by endorsing that the disability '**AUTOSOMAL DOMINANT POLYCYSTIC KIDNEY DISEASE**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in February, 2021 while posted in Peace location and constitutional in nature, 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 Release Medical Board for denying disability element of disability pension to applicant is cryptic, not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous Army Postal Service training and associated stress and strain of Army Postal Service. The applicant has voluntarily joined in Army Postal Service on 14.07.2010 and the disability has started after more than 10 years of Army Postal service i.e. in February, 2021. 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 Postal service.

8. Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, D(Pension/Policy), New Delhi issued policy

MoD ID No. 1(2)/2002/D(Pen/Pol)/Vol-II dated 06.10.2022 for adjudication of cases with reference to Army Postal Service (APS) Deputationists which provides that ***“Where an individual is discharged/released from the Army in circumstances entitling him to the grant of disability pensionary awards, Defence Service Estimates will pay only the disability element of disability pension and Constant Attendance Allowance, where admissible, at the rates and under the conditions as are applicable from time to time. The individual concerned will get this in addition to invalid pension and civil rules if he is invalided from civil service also or otherwise in addition to his pay in civil appointment. Sanction for such award shall be issued by CDA (Pen), Allahabad”***. In view of the above policy, we hold that the applicant is entitled for the grant of disability element of disability pension.

9. Government of India, Ministry of Defence letter No.16(5)/2008/D(Pen/Policy) dated 29.09.2009 stipulates that *“In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their*



*retirement/discharge whether voluntarily or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity.”* In view of aforesaid letter, the applicant is entitled for grant of disability element of disability pension even if he has been discharged at his own request on compassionate grounds.

10. 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 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."*

11. 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.

12. 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/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @30% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge.

13. In view of the above, the **Original Application No. 1116 of 2024** 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 disability of the applicant is held as aggravated by Army Postal 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. 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.

14. No order as to costs.

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

**(Justice Anil Kumar)**  
**Member (J)**

Dated : 17<sup>th</sup> March, 2025

AKD/SB