

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 181 of 2024**

Friday, this the 21st day of March, 2025

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

SC-00251K Lt. Col. Jamal Ahmed (Retd.)
S/o Shri Aijaz Ahmed
R/o House No. 21/2A, VPO – Kurha,
District – Ayodhya (Faizabad) Pin-224204 (UP)

..... **Applicant**

Ld. Counsel for the : **Shri R. Chandra**, Advocate
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi – 110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ Post Office New Delhi – 11.
3. Addl Dte Gen of Manpower (Policy & Planning)/MP5 (B) AG’s Branch, Integrated HQ of MoD (Army), West Block-III, R.K. Puram, New Delhi – 110066.
4. PCDA (Pension), Draupadi Ghat, Allahabad-14 (UP).

.....**Respondents**

Ld. Counsel for the : **Shri J.N. Mishra**, 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 :-

(I) *The Hon’ble Tribunal may be pleased to set aside the rejection order dated 23/06/2023 (Annexure No A-1)*

and rejection order dated 07/02/2024 (Annexure No. A-2).

- (II) The Hon'ble Tribunal may be pleased to direct the respondents to grant Disability Element with effect from 01/07/2023 (Next date of Discharge) along with its arrears and interest thereon at the rate of 18% per annum.*
- (III) Hon'ble Tribunal may be pleased further to grant benefit of rounding of disability pension @ 50 percent in terms of Ram Avtar's case.*
- (IV) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Briefly stated, applicant was commissioned in the Indian Army on 14.07.1999 and retired on 30.06.2023 in Low Medical Category on attaining the age of superannuation. The applicant is in receipt of Service Pension. Before retirement from service, the Release Medical Board (RMB) held at 188 Military Hospital on 30.12.2022 assessed his disabilities (i) **'PRIMARY HYPERTENSION'** @30% for life as neither attributable to nor aggravated (NANA) by service and (ii) **'DIABETES MELLITUS TYPE-II'** @20% as **aggravated by service. Composite disabilities have been assessed @44% for life.** The applicant's claim for grant of disability element of disability pension was rejected vide letter dated 23.06.2023. The applicant preferred First Appeal which too was rejected vide letter dated 07.02.2024. 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 commission, 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 commission in Army. Although the second disability of the applicant has been assessed @20% as aggravated by military service by the RMB. The first disease of the applicant was also contracted during the service, hence it is also attributable to and aggravated by Military Service. He placed reliance on judgments of the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. Union of India & Ors***, reported in (2013) 7 SCC 316, ***Union of India vs. Rajbir Singh*** (2015) 12 SCC 264 and ***Union of India vs. Ram Avtar***, Civil appeal No. 418 of 2012, decided on 10.12.2014 and pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that first disability of the applicant @30% for life has been regarded as NANA by the RMB and though the degree of second disability of the applicant has been assessed @20% as aggravated by military service but the competent authority has treated the applicant's degree of second disability @14%, hence as

per Rule 5, 6, 10, 11 & 12 of the Entitlement Rules for Casualty Pensionary Awards, 2008 and Regulations 37 (a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that “*An Officer who retires on attaining the prescribed age of retirement or on completion of tenure, if found suffering on retirement, from a disability which is either attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted in addition to the retiring pension admissible, a disability element from the date of retirement if the degree of disability is accepted at 20% or more*”, the applicant is not entitled to disability element of disability pension.

5. Ld. Counsel for the respondents placed reliance on the judgment of the AFT (RB) Chennai (Circuit Bench at Hyderabad) in O.A. No. 110 of 2022, **Maj Gen Dinesh Kumar Nautiyal (Retd) vs. Union of India & Others**, decided on 10.11.2023 and AFT (RB) Mumbai in O.A. No. 36 of 2023, **Col Nitin Kumar Tewari (Retd) vs. Union of India & Others**, decided on 07.02.2024 and submitted that in view of aforesaid judgments, the applicant is not entitled to disability element of disability pension. He pleaded for dismissal of the Original Application.

6. 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 two folds:-

(a) Whether the first disability of the applicant is also 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?

7. 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)."

8. 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 '**PRIMARY HYPETENSION**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in October, 2009 while posted in Peace location (Pachmarhi) having no causal relation with stress and strain of service, 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 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 commissioned in Indian Army on 14.07.1999 and the first disability has started after more than ten years of Army service i.e. in October, 2009. With regard to overweight, we find that applicant's ideal weight was 72.5 Kg whereas the actual weight was 80 Kg, over weight is 7.5 Kg which is 10% i.e. less than 20%. As such it cannot be said that the

cause of first disability is overweight. 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.

9. It is pertinent to mention here that judgments relied upon by the respondents in para 5 above are not relevant in this case being based on different facts and circumstances.

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 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."*

11. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017/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 @44% for life to be rounded off to 50% for life

may be extended to the applicant from the next date of his retirement.

13. In view of the above, the **Original Application No. 181 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 first disability of the applicant is held as aggravated by Army Service. The second disability has already been held as aggravated by the RMB. Therefore, the applicant is entitled to get disability element @44% for life which would be rounded off to 50% for life from the next date of his retirement. The respondents are directed to grant disability element to the applicant @44% for life which would stand rounded off to 50% for life from the next date of his retirement. 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.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 21st March, 2025

AKD/SB