

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 614 of 2024**

Tuesday, this the 25th day of March, 2025

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

No. 10182430A, Ex. Sepoy Brij Mohan Pal, S/o Shri Ram Narayan Pal, R/o : Village & Post Office – Bimawan, Tehsil : Ara, District – Bhojpur, Bihar -802151.

Ordinary Residing at 86C/14/1 Kala Danda, Himmatganj, GTB Nagar, Prayagraj, Uttar Pradesh – 211016.

..... Applicant

Ld. Counsel for the : **Shri Vijay Kumar Pandey**, Advocate
 Applicant **Shri Vishnu Kant Awasthi**, Advocate
 Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi -110011.
2. PS Directorate, A Block, Room No. 536, 5th Floor, Defence Offices Complex, KG Marg, Adjutant General’s Branch, IHQ of MoD (Army), New Delhi -110001.
3. Additional Directorate General of Personal Services /AG’s Branch, IHQ of Ministry of Defence (Army), PIN-900256, C/o 56 APO.
4. OIC Records, Record Defence Security Corps, Mill Road, Burnacherry, Post – Kannur, Kerala -670013.
5. PCDA (P), Draupadi Ghat, Allahabad (UP)-211014.

.....Respondents

Ld. Counsel for the : **Shri Alok Kumar 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) *That this Hon’ble Tribunal may kindly be pleased to set aside the impugned rejection orders of disability pension dated 27.03.2023, & 27.07.2022, passed by opp. Party No. 2 & 3, as contained in annexure No. 1 & 2 to this original application, and direct the opp. Party No.4 to issue a PPO for granting disability pension @58% rounding of 75% for life to the applicant from the date of invalidment i.e. 31.03.2015 to actual date of payment and also onwards, and provide the interest on the aforesaid delayed amount of disability pension with 18% p.a. since due to actual date of payment in the interest of justice.*
- (ii) *That this Hon’ble Tribunal may kindly be awarded the cost Rs.20,00,000 (Rs. Twenty Lac Only) to the applicant against the opposite parties.*
- (iii) *That this Hon’ble Tribunal may be pleased to pass any other order or direction which this Hon’ble Court may deem just and proper be passed in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the 111 Infantry Battalion (Territorial Army) Kumaon of Indian Army on 09.08.1994 and discharged from Territorial Army service on 31.08.2014 (AN) on completion of terms of engagement after rendering 18 years, 05 months and 11 days of regular service. The applicant is in receipt

of service pension for the services rendered in the Territorial Army. Thereafter, the applicant re-enrolled in the Defence Security Corps (DSC) on 28.01.2015 discharged from DSC service on 31.03.2021 in Low Medical Category under Rule 13 (3) Item III (iii) (a) (i) of the Army Rules, 1954 after rendering 06 years 02 month and 04 days of DSC service. Before discharge from service, the Release Medical Board (RMB) held at Military Hospital, Jabalpur on 25.01.2021 assessed his disabilities (i) **'PRIMARY HYPERTENSION (ICD-I-10)'** @ 30% and (ii) **'MODERATE DEPRESSIVE EPISODE (ICD-F32.1, Z09)'** @ 40% for life, **composite disabilities @58% for life** and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 05.06.2021. The applicant preferred First Appeal which too was rejected vide letter dated 27.07.2022 which was communicated to the applicant vide letter dated 16.08.2022. The applicant preferred Second Appeal which too was rejected vide letter dated 27.03.2027 which was communicated to the applicant vide letter dated 13.04.2023. It is in this perspective that the applicant has preferred the present Original Application.

3. During the course of arguments, Ld. Counsel for the applicant submitted that although in the Original Application the applicant has claimed for the grant of disability pension but at this

stage he is claiming for the grant of disability element of disability pension only.

4. 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/DSC. The diseases of the applicant were contracted during the service, hence they are attributable to and aggravated by Army/DSC 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%.

5. On the other hand, Ld. Counsel for the respondents contended that composite disabilities of the applicant @58% for life have been regarded as NANA by the RMB, hence as per Regulation 173 of Pension Regulations for the Army, 1961 (Part-I) and revised Regulation 81(a) of Pension Regulations for the Army, 2008 (Part-I) which provides that *“Service personnel who is invalided from service on account of a disability which is attributable to or aggravated by such service may, be granted a disability pension consisting of service element and disability element in accordance with the Regulations in this section”*, the applicant is not entitled to disability element of disability pension. Ld. Counsel for the respondents further submitted that during the

initial terms of engagement, the applicant was downgraded to low medical category P2 (P) with effect from 07.07.2020 for the first disability and S2 (P) with effect from 04.01.2021 for the second disability which is unacceptable medical category for further retention in service as per policy in vogue. He further contended that the competent authority has rightly rejected the claim of applicant for grant of disability pension giving due weightage, value and credence to the opinion of the medical board. Ld. Counsel for the respondents contended that Para 5 of Entitlement Rules for Casualty Pensionary Awards in Armed Forces Personnel, 2008 stipulates that *“The medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore, it may not detect some dormant disease. Besides certain hereditary constitutional and congenital diseases 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 aggravation by military service.”* 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 disabilities of the applicant are attributable to or aggravated by Military/DSC 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 disabilities '**PRIMARY HYPERTENSION (ICD-I-10)**' and '**MODERATE DEPRESSIVE EPISODE (ICD-F32.1, Z09)**' are neither attributable to nor aggravated (NANA) by service on the ground of onset of disabilities in March 2019 and July 2019 respectively while posted in Peace locations (Barrackpore and Danapur), 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 are cryptic, 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 Territorial 09.08.1994, discharged from TA on 31.08.2014, re-enrolled in DSC on 28.01.2015 and the disabilities have started after more than 24 years of Army/DSC service i.e. in March 2019 and July 2019. We also find that applicant's ideal weight was 64.75 Kg whereas the actual weight was 54 Kg which is even less than the ideal weight. As such it also cannot be said that the cause of 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 both the disabilities of the applicant should be considered as aggravated by military/DSC service.

9. 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.”

10. 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.

11. 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) SLR 445, 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.”

12. As such, in view of the decision of Hon'ble Supreme Court in the cases of **Union of India and Ors vs Ram Avtar & ors** and **Shiv Dass (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 @58% for life to be rounded off to 75% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

13. In view of the above, the **Original Application No. 614 of 2024** deserves to be partly allowed, hence **partly allowed**. The impugned orders, rejecting the applicant's claim for grant of disability pension, are set aside. Both the disabilities of the applicant are held as aggravated by Army/DSC Service. The applicant is entitled to get disability element @58% for life which would be rounded off to 75% for life w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @58% for life which would stand rounded off to 75% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 06.06.2024. 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 : 25 March, 2025

Ashok/AKD/-