

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 348 of 2023**Thursday, this the 1st day of Jun, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Maj Gen Sanjay Singh, Member (A)”**

JWO Satish Kumar (Retd) (742837-H) S/O Shri Dhrampal Sharma,
House No. 299, Near Primary School, Sadullapur, (Greater Noida
West), PO: Vidpura, Ghaziabad, Distt: Gautm Budh Nagar (U.P)
203207.

-----Applicant

Ld. Counsel for the Applicant: **Shri Amit Asthana, Advocate**

Versus

1. The Union of India through Secretary, Ministry of Defence,
South Block, DHQ PO, New Delhi - 110011.
2. Chief of the Air Staff, Air Hedquarters, Vayu Bhawan, Rafi
Marg, New Delhi – 110106.
3. Principal Director, Directorate of Air Veterans, Air HQs (SP),
Subroto Park, New Delhi - 110010.
4. Joint Controller of Defence Accounts (Air Force), 2nd Floor,
AFCAO Building, Subroto Pak, New Delhi - 110010.
5. Air Officer Commanding / Commanding Officer, 265 SU, Air
Force.

..... Respondents

Ld. Counsel for the Respondents : **Shri JN Mishra,
Central Govt. Counsel.****ORDER (ORAL)****“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

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

- “(a) Quash the impugned order (Annexure A-I), the Air HQ Letter No. AHQ/99798/27/DAV/A &A/Corres/Cell-04 dated 21.02.2023 vide which notional increment has been illegally denied to the applicant.*
- (b) Pass an order re-calculating pension and other terminal benefit its after taking into account the benefit it of notional increment as on 30 Jun 2018.*
- (c) Pass an order granting interest @ 18% on the arrears of pension and other terminal benefits to which the applicant is held entitled in terms of the re-calculation after implementing the order at (b) above.*
- (d) Pass an order awarding cost of the present application for compelling the filing of the instant application.*
- (e) Pass any other or such further order (s) or direction (s) in favour of the applicant and against the respondents which this Hon’ble Tribunal feels necessary in the attendant circumstances of the case, to meet the ends of justice.”*

2. Briefly stated, applicant was commissioned in the Indian Army on 25.04.2008 and released from service on 24.04.2022 (AN) in Low Medical Category. At the time of discharge from service, the Reclassification Medical Board (RMB) held at Command Hospital Northern Command in March 2022 assessed his disabilities (i) **'PRIMARY HYPERTENSION (I-10.0)'** @30% for life and (ii) **'DIABETES MELLITUS TYPE-II @20% for life composite disabilities @ 44% for life** and opined the disabilities as aggravated by military service. The applicant's claim for grant of disability pension was rejected vide letter dated 30.06.2022. Applicant preferred appeal dated 29.08.2022 which is still pending with the respondents. 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. The diseases of the applicant were contracted during field service while on foreign posting at Tajikistan, hence they are attributable to and aggravated by Army Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of disability pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to 50%. Ld. Counsel for the applicant further pleaded that illness of the applicant be treated

as battle casualty and applicant be granted liberalized pensionary awards and benefits in accordance with GoI, MoD letter dated 26.03.2019.

4. On the other hand, Ld. Counsel for the respondents contended that applicant was released from service on completion of terms of engagement after rendering 14 years of service. RMB assessed disability '**PRIMARY HYPERTENSION**' and "**DIABETES MELLITUS TYPE-II**' as not attributable to Army service with 44% disability qualifying for disability pension for life. The diseases have no casual connection to Army service. As such, under the provisions of Regulation 37 of Army Pension Regulations, 2008, Part-I, his claim for disability pension has rightly been rejected by the respondents. The applicant is not entitled to disability element of disability pension as his disabilities are assessed as not attributable to service. Ld. Counsel for the respondents further urged that the applicant has never represented his case for grant of war injury pension and has only requested for grant of disability pension. He submitted that applicant is not entitled for grant of War Injury element/pension as disabilities are not connected/notified as 'Battle Casualty/Battle Accident'. He submitted that the instant Original Application has no substance and is liable to be dismissed.

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 three folds:-

- (a) Whether the applicant is entitled for war injury pension?
- (b) Whether the disabilities of the applicant are attributable to or aggravated by military Service?
- (c) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. As for as first question for grant of Battle Casualty Status is concerned, before dealing with the rival submissions on grant of war injury, it would be appropriate to examine the relevant Rules and Regulations on the subject matter which are reproduced as under :-

- (a) **Army Order 1/2003/MP**
Physical/Battle Casualties
 Para 1 to 3. x x x x x x x x x

4. *Battle Casualties: Battle Casualties are those casualties sustained in action against enemy forces or whilst repelling enemy air attacks. Casualties of this type consist of the following categories:-*

- (a) *Killed in action*
- (b) *Died of wounds or injuries (other than self-inflicted)*
- (c) *Wounded or injured (other than self-inflicted)*
- (d) *Missing*

5. *Circumstances for classification of Physical/Battle Casualties are listed in Appendix 'A'*

Appendix A to AO 1/2003/MP

Battle Casualties

1. *The circumstances for classifying personnel as battle casualties are as under:-*
 - (a) *Casualties due to encounter with troops or armed personnel or border police of a foreign country or during*

operations while in service with peace keeping missions abroad under government orders.

(b) Air raid casualties sustained as a direct or indirect result of enemy air action

(c) Casualties during action against armed hostiles and in aid to civil authorities to maintain internal security and maintenance of essential services.

(d) Accidental injuries and deaths which occur in action in an operational area.

(e) Accidental injuries which are not sustained in action and not in proximity to the enemy but have been caused by fixed apparatus (e.g. land mines, booby traps, barbed wire or any other obstacle) laid as defence against the enemy, as distinct from those employed for training purposes, and if the personnel killed, wounded or injured were on duty and are not to blame, will be classified as battle casualties, notwithstanding the place of occurrence or agency laying those, viz. own troops or enemy, provided the casualties occur within the period laid down by the government.

(f) Casualties during peace time as result of fighting in war like operations, or border skirmishes with a neighbouring country.

(g) Casualties occurring while operating on the International Border or Line of Control due to natural calamities and illness caused by climatic conditions.

(h) Casualties occurring in aid to civil authorities while performing relief operations during natural calamities like flood relief and earthquake.

(i) Casualties occurring while carrying out battle inoculation/training or operationally oriented training in preparation for actual operations due to gunshot wound/explosion of live ammunition/explosives/mines or by drowning/electrocution.

(j) Casualties occurring while carrying out battle inoculations/training or operationally oriented training in preparation for actual operations due to gunshot wound/explosion of live ammunition/ explosives/mines or by drowning/electrocution.

(k) Army personnel killed/wounded unintentionally by own troops during course of duty in an operational area.

(l) Casualties due to vehicle accidents while performing bonafide military duties in war/border skirmishes with neighbouring countries including action on line of control and in counter insurgency operations.

(m) Casualties occurring as a result of IED/bomb blasts by saboteurs/ANEs in trains/buses/ships/aircrafts during mobilization or deployment in war/war like operations.

(n) Casualties occurring due to electrocution/snake bite/drowning during course of action in counter insurgency/war.

(o) Accidental death/injuries sustained during the course of move of arms/explosives/ammunition for supply of own forces engaged in active hostilities.

(p) Death due to poisoning of water by enemy agents resulting in death/physical disabilities of own troops deployed in operational area in active hostilities.

(q) Accidental deaths/injuries sustained due to natural calamities such as floods, avalanches, cyclones, fire and lightening or drowning in river while performing operational duties/movements in action against enemy forces and armed hostilities in operational area to include deployment on international border or line of control.

(r) Army personnel killed/wounded by own troops running amok in an operational area.

(s) Army personnel killed/wounded due to spread of terror during leave/in transit because of their being army personnel.

Physical Casualties.

2. Deaths caused due to natural causes/illness/accident/suicide/murder due to family disputes in operational and non-operational areas will be treated as physical casualties.

Miscellaneous Aspects

(a) Saboteurs, even of own country, will be treated as enemy for the purpose of classifying their actions as enemy action and encounters against them as encounters against the enemy.

(b) Report regarding personnel wounded or injured in action will specify the nature of the wound or injury and will also state whether the personnel remained on duty.

(c) Reports on personnel missing in action will indicate, if possible, their likely fate, eg, 'believed killed', 'believed prisoner of war', of 'believed drowned' etc.

(d) Any casualty occurring deployment/mobilization of troops for taking part in war or war like operation, will be treated as battle casualty.

(b) **Govt of India, Ministry of Defence letter No. 1(2)/97/D/(Pen-C) dated 31.01.2001**

1. to 3. xxx xxxx xxxx

4.1 For determining the pensionary benefits for death or disability under different circumstances due to attributable/aggravated causes, the cases will be broadly categorized as follows:-

Category A

Death or disability due to natural causes neither attributable to nor aggravated by military service as determined by the competent medical authorities. Examples would be ailments of nature of constitutional diseases as assessed by medical authorities chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty.

Category B

Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

Category C

Death or disability due to accidents in the performance of duties such as :-

- (i) Accidents while travelling on duty in Government Vehicles or public/private transport;
- (ii) Accidents during air journeys;
- (ii) Mishaps at sea while on duty'
- (iii) Electrocutation while on duty, etc.
- (iv) Accidents during participation in organized sports events/adventure activities/expeditions/training.

Category D

Death or disability due to acts of violence/attack by terrorists, anti-social elements, etc. whether on duty other than operational duty or even when not on duty. Bomb blasts in public places or transport, indiscriminate shooting incidents in public, etc. would be covered under this category, besides death/disability occurring while employed in the aid of civil power in dealing with natural calamities.

Category E

- Death or disability arising as a result of:-
- a) Enemy action in international war.
 - b) Action during deployment with a peace keeping mission abroad.
 - c) Border skirmishes.
 - d) During laying or clearance of mines including enemy mines as also minesweeping operations.
 - e) On account of accidental explosions of mines while laying operationally oriented mine-filed or lifting or negotiating mine-field laid by enemy or own forces in operational areas near international borders or the line of control.

- f) *War like situations, including cases which are attributable to/aggravated by :-*
- (i) *Extremist acts, exploding mines etc., while on way to an operational area*
 - (ii) *Battle inoculation training exercises or demonstration with live ammunition.*
 - (iii) *Kidnapping by extremists while on operational duty.*
- (g) *An act of violence/attack by extremists, anti-social elements etc while on operational duty.*
- (h) *Action against extremists, antisocial elements, etc. Detach/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this category.*
- (j) *Operations specially notified by the Govt. from time to time.*

4.2 *Cases covered under category 'A' would be dealt with in accordance with the provisions contained in the Ministry of Defence letter No. 1(6)/98/D(Pen/Services) dated 3.2.98 and cases under category 'B' to 'E' will be dealt with under the provisions of this letter.*

Notes:-

- (i) *The illustrations given in each category are not exhaustive. Cases not covered under these categories will be dealt with as per Entitlement Rules to casualty pensionary awards in vogue.*
- (ii) *The question whether a death/disability is attributable to or aggravated by military service will be determined as per provisions of the Pension Regulations for the Armed Forces and the Entitlement Rules in vogue as amended from time to time.*
- (iii) *In case of death while in service which is not accepted as attributable to or aggravated by Military Service or death after retirement/discharge/invalidment, Ordinary Family Pension shall be admissible as specified in Min of Def letter No. 1 (6)/98/D(Pen/Ser) dated 03 Feb 98 as modified vide Ministry of Defense letter No.1(I)99/D(Pen/Ser) dated 7.7.99.*
- (iv) *Where an Armed Forces personnel is invalided out of service due to non-attributable/non-aggravated causes, Invalid pension/gratuity shall be paid in terms of Para 9 of Ministry of Defense letter No 1 (6)/98/D (Pen/Ser) dated 03 Feb 98 as amended/modified vide Ministry of Defense letter No. 1 (I)/99/D(Pen/Ser) dated 07.06.99.*

XX

XX

XX

10.1. *Where an Armed Forces Personnel is invalided out of service on account of disabilities sustained under circumstances mentioned in Category "E" of Para 4.1 above, he/she shall be entitled to War Injury Pension consisting of Service element and War Injury element."*

7. Besides the disability being suffered in an operational area, disability should also qualify by an action in front of enemy for grant of Battle Casualty Status. The dictionary defines action as : Expenditure of energy, deed, operation, gesture, battle lawsuit. In action would mean while engaged in battle. Mere presence in an operational area would not qualify as being in action. A full reading of Government of India letter dated 31.01.2001 relating to Battle Casualties and classification of casualties for pensionary purposes shows that in all circumstances there is a direct and immediate relationship with the enemy or actions related to the enemy. In other words, there should be a direct and casual connection between the duties being performed and the cause of accident or death. This letter cannot be read in isolation and need to be read in their full context.

8. Here we may refer to a few judgments which clarify the scope and interpretation of statutes. As said by Lord Davey: "Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter. To ascertain the meaning of a clause in a statute the court must look at the whole statute, at what precedes and at when succeeds and not merely at the clause itself. As stated by **Sinha, CJI**, "The court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute, it must compare the clause with the other parts of the law,

and the setting in which the clause to be interpreted occurs. It is also apt to take note of few decisions of the Apex Court with regard to interpretation of Statutes.

9. In ***CIT vs Mcdowell & Co Ltd (2009) 10 SCC 755 (Para 20)***, it has been held that when particular words pertaining to a class or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified.

10. The Apex Court in ***Union of India and others vs. Brig PS Gill, (2012) 4 SCC 463*** had an occasion to interpret Sections 30 and 31 of the Armed Forces Tribunal Act 2007. The question which was up before the court was as to whether against a decision by the Armed Forces Tribunal, an appeal can be filed as a matter of right under Section 30 of the said Act which is subject to the provision of Section 31. The Court examined the scope of Sections 30 to 31 and while doing so it had held that 'it is one of the settled canons of interpretation of statutes that every clause of the statute should be construed with respect to the context and the other clauses of the Act, so far as possible to make a consistent enactment of the whole statute or series relating the subject". Reference to the decisions of this Court in ***M Pentiah v. Muddala Veeramallapa, AIR 1961 SC 1107*** and ***Gammon India Ltd v. Union of India (1974), SCC 596***, should in this regard suffice. In *Gammon India Ltd*, this Court observed "19....*Every clause of a statute is to be construed with*

reference to the context and other provisions of the Act to make a consistent and harmonious meaning of the statute relating to the subject matter. The interpretation of the words will be by looking that the context, the collocation of the words and the object of the words relating to the matters.”

11. We may also gainfully extract the following passage from V. **Tulasamma V. Sessa Reddy (1977) 3 SCC 99** wherein this Court observed “69... *It is an elementary rule of construction that no provisions of a statute should be construed in isolation but it should be construed with reference to the context and in the light of other provisions of the statute so as, as far as possible, to make a consistent enactment of the whole statute”.*

12. In **Raheja Universal Ltd Vs NRC Ltd (2012) 4 SCC 148**, it has been held that statute should be construed in its entirety any section or sub section should not be construed and read in isolation.

13. Having considered the facts and circumstances of the case, the rules and policy governing such diseases and the above principles of interpretation, we are of the view that the applicant did not qualify for being declared as a Battle Casualty Status and for grant of War Injury Pension. Applicant has not produced any document which can ascertain that disability suffered by the applicant was due to participation in war. For grant of war injury pension there are some para meters i.e. the casualty should be reported to Army Headquarters

within 24 hours of the accident/illness. Para 5 (h) (iv) of Govt of India, Min of Def letter dated 26 March, 2019 February, 1972 referred by the applicant states that death, injury or illness suffered by the soldiers during deployment at Tajikistan shall be treated as Battle Casualty Status and be covered for liberalized pensionary awards and benefits subject to fulfilling conditions contained in Govt of India, Min of Def letter dated 30.10.1987. There is nothing on record to prove that applicant suffered disability in war like situation as contained in Govt of India letter dated 30.10.1987. In this view of the matter, we are of the opinion that the applicant has failed to prove his case for grant of Battle Casualty Status.

14. Keeping in view the facts and circumstances of the case and various policies and Army Orders, the case of the applicant for grant of war injury pension does not fall under any Category which entitles him for grant War Injury Pension as per rules. We converge to the view that applicant is not entitled for grant of Battle Casualty status and grant of War Injury Pension.

15. Second question to be decided is attributability of the case. 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)."

16. 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** and "**DIABETES MELLITUS TYPE-II**" are idiopathic disorder in which genetic/lifestyle factors play an important role. No service related cause identifiable in the case. Hence, held not attributable, therefore, applicant is not entitled to disability element of disability pension. However, aggravation is conceded due to stress and strain of military service while serving in a field area (UNMSN Tajikistan). So, considering the facts and circumstances of the case and place of duty being a field station, we are of the opinion that this reasoning of Release Medical Board for denying disability pension to applicant is cryptic, not convincing and doesn't reflect the complete truth on the matter. The applicant was commissioned in Indian Army on 25.04.2008 and the disabilities have been started after more than 12 years of Military service i.e. in Feb 2021 while applicant was posted in foreign country in field area. 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 Military service.

17. Third question to be decided is rounding off disability pension. 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 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."

18. In view of the decision of Hon'ble Supreme Court in the case of ***Union of India and Ors vs Ram Avtar & ors (supra)***, we are of the considered view that benefit of rounding off 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 discharge.

19. In view of the above, the **Original Application No. 108 of 2023** deserves to be partly allowed, hence partly allowed. The applicant is not entitled for grant of Battle Casualty Status. The applicant is already getting service element of disability pension. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. Both the disabilities **PRIMARY HYPERTENSION and DIABETES MELLITUS TYPE-II** are held as aggravated by Army Service. 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 discharge. 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 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.

20. No order as to costs.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 01 Jun, 2023
Rk/-