

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No 94 of 2023

Monday, this the 08th day of May, 2023

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

No. JC- 763986P Ex. Sub / Master Tech (GUN) Yogendra Yadav,
Son of Late Banwari Yadav, R/o Village and Sukhamdutt Nagar,
Post Kothia, Tehsil : Sagari, District : Azamgarh - 276124.

Applicant

Ld. Counsel for the Applicant: **Shri Manoj Kumar Awasthi,**
Advocate

Versus

1. Union of India, through its Secretary Ministry of Defence South Block, New Delhi – 110011.
2. Chief of the Army Staff, IHQ of MoD (Army), Army HQ, South Block New Delhi.
3. The Appellate Committee on First Appeal (ACFA) Additional Directorate General of personnel Services/ PS – 4 (Imp – II) AG’s Branch, Integrated HQ of MoD(Army) DHQ-PO New Delhi – 110011.
4. The PCDA (Pension), Draupadi Ghat, Allahabad (Prayagraj).

..... 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) To issue pass an order or directions to set – aside /quash the order No. JC- 763986P / DP-4/Pen dated 19.05.2022 passed by Respondent No. 2 annexed as Annexure No. 1 to this original application.*
- (b) To issue pass an order or directions to the respondents to grant Disability Element of disability Pension @ 40.5% with effect from date of discharged i.e. 30.04.2022*
- (c) To issue pass an order or directions to respondents to grant benefit of Rounding off Disability Element of disability Pension @ 40.5% to @ 50% for life to the applicant and pay due arrears including consequential benefits with interest @ 12% p.a. till final payment is made in light of Hon’ble Apex Court judgments and Policy letter dated 31.01.2001.*
- (d) Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstance of the case is also granted alongwith cost of the O.A.”*

2. The facts of the case, in brief, are that applicant was enrolled in the Indian Army on 30.04.1994 and was discharged from service on 30.04.2022 (AN) in low medical category after serving more than 28 years of service as per Army rule 13(3)I(i)(a). At the time of discharge from service, the Release Medical Board (RMB) assessed his disabilities (i) **“PRIMARY HYPERTENSION (I10)” @ 30% for life** (ii) **‘POST OPERATIVE HYPOTHYROIDISM (E89.0)’** and (iii) **POST OPERATIVE PARAHYPOTHYROIDIS (E 21.5)” @15% for life**. The composite percentage of disablement has been assessed @ 40.5% for life and opined that the disability of the applicant was neither attributable to nor aggravated by military service (NANA). The applicant’s claim for grant of disability pension was rejected by the respondents vide order dated 19.05.2022. Thereafter, applicant submitted first appeal dated 05.07.2022 which has not yet been replied by the respondents. Being denied for disability pension, the instant Original Application has been filed.

3. Learned Counsel for the applicant submitted that applicant was medically fit when he was enrolled in the service and any disability not recorded at the time of enrolment should be presumed to have been caused subsequently. The action of the respondents in not granting disability pension to the applicant is illegal. In this regard, he relied on the decision of the Hon’ble Supreme Court in

the case of *Dharamvir Singh vs. Union of India and others*, (2013) AIR SCW 4236 and *Sukhvinder Singh vs. Union of India & Others* (2014 STPL (Web) 468 SC and submitted that for the purpose of determining attributability of the disease to military service, what is material is whether the disability was detected during the initial pre-commissioning medical tests and if no disability was detected at that time, then it is to be presumed that the disabilities arose while in service, therefore, the disabilities of the applicant are to be considered as aggravated by service and he is entitled to get disability pension @ 40.5%. He further prayed for rounding off of disability pension from 40.5% to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that applicant was discharged from service on completion of terms of engagement after rendering 28 years of service. RMB assessed disabilities (i) '**PRIMARY HYPERTENSION**', as neither attributable to nor aggravated by Army service while (ii) '**POST OPERATIVE HYPOTHYROIDISM**' and (iii) '**POST OPERATIVE PARAHYPOTHYROIDIS**' are held as attributable to service but not aggravated by service and collectively assessed @ 15% for life. Composite assessment of these disabilities is @40.5% and only 15% Net assessment qualifying for disability pension for life. The disability (i) '**PRIMARY HYPERTENSION**' has occurred during posting at Peace Station

where there is no stress and strain of military service. The disease has no casual connection to Army service. As such, under the terms of Regulation 53(a) of Pension Regulation for the Army 2008 (Part 1), 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 NANA. He submitted that the instant Original Application does not have any merit and the same is 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 two folds:-

- (a) Whether the disability of the applicant is attributable to or aggravated by Army Service?
- (b) 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 (i) **PRIMARY HYPERTENSION** is neither attributable to nor aggravated (NANA) by service on the ground of onset of disabilities in May 2014 while posted in Peace location (Chandimandir), therefore, applicant is not entitled to disability element of disability pension. The disabilities (ii) **POST OPERATIVE HYPOTHYROIDISM** and (iii) **POST OPERATIVE PARAHYPOTHYROIDIS** are held as attributable to service and have been collectively assessed @ 15%. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying 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 Army training and associated stress and strain of Army service. The applicant was enrolled in Indian Army on 30.04.1994 and the disability has been started after more than 20 years of Army service i.e. in May 2014. 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 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 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."*

9. In view of the above, the Original Application **No. 94 of 2023** deserves to be allowed, hence allowed. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The disability **PRIMARY HYPERTENSION** is also held as aggravated by Army Service. The applicant is entitled to get disability element @40.5% for life which would be rounded off to 50% for life from the date of his discharge. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 08th May, 2023

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