

**Court No. 1**

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

**ORIGINAL APPLICATION No. 118 of 2023**

Thursday, this the 18<sup>th</sup> day of May, 2023

**"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**"Hon'ble Vice Admiral Atul Kumar Jain, Member (A)"**

IC 05701F, Commander (Retd.), Himant Hothi, S/o Late Dr. Joga Singh Hothi, A-1101, Grace Apartments, Sushant Golf City, Lucknow.

..... **Applicant**

Ld. Counsel for : **Col. Ashok Kumar (Retd.)**, Advocate  
the applicant **Shri Rohit Kumar**, Advocate

**Versus**

1. Union of India through Secretary, Ministry of Defence, New Delhi -110011.
2. Directorate of Pay and Allowances, Integrated Headquarters of Ministry of Defence (Navy), Room No. 108, Naval Headquarters Annexe, Talkatora Stadium, New Delhi - 110004.
3. Second Appellate Committee on Pension ADGPS, AG's Br/PS-4 (Imp-II), IHQ of MoD (Army), Room No. 11, Plot No. 108 (West), Brassey Avenue, Church Road, New Delhi - 110011.

.....**Respondents**

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

**ORDER**

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

- (a) *Quash the rejection order of the Second Appellate Committee on Pension rejection order bearing No. copy of rejection order of the Second Appellate Committee on Pension bearing No. PN/7734/DP/19 dated 01 Sept 2022.*
- (b) *Quash the rejection order of the First Appellate Committee on Pension bearing No. PN/7734/DP/19 dated 19 Jan 2022.*
- (c) *Quash the Initial rejection order bearing No. PN/7734/DP/19 dated 11 Apr 2019.*
- (d) *Direct the respondents to pay the disability pension to the applicant with effect from 09 Jan 2019 date of retirement of the applicant.*
- (e) *Direct the respondents to club all the three disabilities [(i) Dyslipidemia 1-5% (ii) Asymptomatic Hyperuricemia 11-14% (composite assessment 20% and (iii) PIVDL4 and 1.5 (aggravated) 20%] of the applicant and thereafter grant disability pension to the applicant from the date of retirement i.e. 09 Jan 2019.*
- (f) *To direct the respondents to produce legible copy of the release medical board and also copy of the post discharge medical board proceedings of the applicant.*
- (g) *To direct the respondents to grant the benefits of rounding of to the applicant as catered in the paragraph 7.2 of the Government of India, Ministry of Defence, New Delhi policy letter No. 1(2)/97/1/D(Pen-C) dated 31 Jan 2001 effective from 01 Jan 1996.*
- (h) *To issue any other order or direction considered expedient and in the interest of justice and equity.*
- (i) *Award cost of the petition.*

2. The brief facts of the case are that the applicant was commissioned in the Indian Navy on 10.01.2005 and retired from service on 09.01.2019 in Low Medical Category. At the time of retirement, Release Medical Board (RMB) held at Base Hospital, New Delhi on 01.01.2019 assessed his disabilities (i) '**DYSLIPIDEMIA**' @1-5% for life as neither attributable to nor aggravated by service (NANA) and (ii) '**ASYMPOOMATIC HYPERURICEMIA**' @11-14% for life as **aggravated by service.**

Applicant's claim for grant of disability pension was rejected vide letter dated 11.04.2019. The applicant preferred First Appeal which too was rejected vide letter dated 19.01.2022. The applicant also preferred Second Appeal which too was rejected vide letter dated 01.09.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of commission and the second disability was regarded as aggravated by service but it has been assessed @11-14% for life. The first disability of the applicant was also contracted during service, hence it is also attributable to or aggravated by service. Ld. Counsel for the applicant has relied upon the Hon'ble Apex Court judgment in the case of **Sukhwinder Singh vs Union of India & Ors**, reported in (2014) STPL (WEB) 468 SC and contended that since applicant's services were cut short and he was retired from service prior to completion of his service tenure, therefore his retirement from service should be a deemed invalidation as held in the case of **Sukhwinder Singh** (supra) and applicant deserves to be granted disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents submitted that composite disabilities has been assessed @20% for life but the first disability of applicant has been regarded as NANA and the second disability has been assessed @14-19% for life i.e.

below 20% and regarded as aggravated by service, he is not entitled to disability pension in terms of Regulation 28 of Navy Pension Regulations, 1964 and his claim was rightly denied by the respondents being second disability below 20% and first disability being NANA. He pleaded for dismissal of the Original Application.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. For adjudication of the controversy involved in the instant case, we need to address only two issues; firstly, is the retirement of applicant a case of normal retirement or invalidation? and secondly is applicant is entitled to disability pension being first disability as NANA and second disability below 20% as aggravated by service.

7. For the purpose of first question as to whether the retirement of the applicant by Release Medical Board is a case of retirement or invalidation. In this context, it is clear that the applicant was retired from service before completion of his service tenure in low medical category. In this regard, Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982 defines invalidation as follows:

*“Invaliding from service is a necessary condition for grant of a disability pension. An individual, who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalided from service. JCOs/ORs and equivalent in other services who are placed permanently in a medical category other than ‘A’ and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the*

*completion of their engagement will be deemed to have been invalidated out of service."*

8. Thus, in light of above definition, it is clear that the applicant was in low medical category as compared the one when he was commissioned and hence his retired is to be deemed as invalidation out of service.

9. The law on this point is very clear as reported in (2014) STPL (WEB) 468, ***Sukhwinder Singh vs Union of India & Ors.*** Para 9 of the aforesaid judgment being relevant is reproduced as under:-

*"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty percent and seems to us to be logically so. Fourthly, whenever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."*

10. From the above mentioned Rule on disability pension and ratio of law emerging out of above Hon'ble Apex Court's judgment, it is clear that once a person has been commissioned in a fit medical category, the benefit of doubt will lean in his favour unless cogent reasons are given by the Medical Board as to why the disease could not be detected at the time of commission. In

this case, we find that the applicant was placed in low medical category due to his second disability '**ASYMPTOMATIC HYPERURICEMIA**' and infection contracted in service, therefore, the RMB has declared his disability as aggravated by military service. The aforesaid law also makes clear that in case of invalidation the disability percentage is presumed to above 20% irrespective of the disability percentage assessed by RMB/IMB.

11. In view of the above, we are of the considered opinion that applicant's retirement vide Release Medical Board held on 01.01.2019 is to be treated as invalidation in terms of Rule 4 of the Entitlement Rules (supra).

12. However, we are agree with the opinion of the RMB with regard to first disability i.e. '**DYSLIPIDEMIA**' as NANA as it occurs due to dietary indiscretion.

13. 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 noded 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."

14. 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.

15. 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."

16. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass** (supra) as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

17. In view of the above, the **Original Application No. 118 of 2023** deserves to be allowed, hence allowed. The impugned orders, rejecting the applicant's claim for grant of disability



pension, are set aside. The second disability of the applicant is held @20% for life. The applicant is entitled to get disability pension @20% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability pension to the applicant @20% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 30.01.2023. 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

18. No order as to costs.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated: 18 May, 2023

AKD/Ashok/-