

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 1221 of 2023

Monday, this the 02nd day of December, 2024

“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Maj. Gen. Sanjay Singh, Member (A)”

JC-701596K Ex. Sub. Kundan Singh Mehra, S/o Shri Lal Singh,
 R/o : H. No. 4, Gali No. 5A, Moh – CMT Coloney, Dahariya, P.O.
 Manpur (West), District – Nainital-263139 (UK)

..... Applicant

Ld. Counsel for the : **Shri K.P. Datta**, Advocate.
 Applicant

Versus

1. Union of India, through its Secretary, Integrated HQs of MoD (Army), New Delhi-110011.
2. The Additional Directorate General of Personnel Services, PS-8/AG’s Branch, IHQ of MoD (Army), Room No. 527, 5th Floor, ‘A’ Block, Defence Office Complex, KG Marg, New Delhi-110001.
3. The Officer in Charge, Records, AMC Lucknow, Pin-226002 (UP).
4. The PCDA (P), Draupadi Ghat, Allahabad, Pin-211014 (UP).

.....Respondents

Ld. Counsel for the : **Dr. Chet Narayan Singh**, Advocate
 Respondents. Central Govt. 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:-

- A. *To issue/pass an order to set-aside/quash rejection order passed by IHQ of MoD (Army) letter No. B/40502/634/2023/AG/PS-8 dated 12 Jul 2023, intimated vide Records AMC letter No. JC701596K/ Pen/DP/1st Appeal dated 04.09.2023.*
- B. *To issue/pass an order to grant disability element in disability (a) “PRIMARY HYPERTENSION” @30% along with disability (b) (Diagnosis Revised) “L4 SPONDYLOLYSIS WITH L4 OVER L5 GRADE-1 ANTEROLISTHESIS” @30% already granted him and composite disability element @51% as approved by Release Medical Board for both disabilities with benefit of Rounding off to 75% in light of Judgment of Hon’ble Apex Court and Order passed by Hon’ble Armed Forces Tribunal in similar cases from next date of discharge wef 01.03.2023.*
- C. *To issue/pass an order to grant arrears accrued on disability element calculating rounding off benefits to 75% along with interest @18% p.a. on arrears from next date of discharge wef 01.03.2023.*
- D. *To issue/pass an order to issue Corrigendum PPO duly revised composite disabilities @51% with benefits of rounding off to 75% from next date of discharge wef 01.03.2023.*
- E. *To any other order as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Army Medical Corps of Indian Army on 23.02.1995 and was discharged from service on 28.02.2023 in Low Medical Category on completion of terms of engagement under Rule 13(3) Item I (i) of the Army Rules, 1954 after rendering 28 years and 06 days of service. The applicant is in receipt of Service Pension. Before discharge from service, the Release Medical Board (RMB) held at 164 Military Hospital on 17.08.2022 assessed his disabilities (i) '**PRIMARY HYPERTENSION (I 10.0)**' @30% for life as neither attributable to nor aggravated (NANA) by service and (ii) '**ANTEROLISTHESIS L4 OVER L5 WITH DIFFUSE DISC BULGE WITH SPONDYLOLYSIS (DIAGNOSIS REVISED) L4 SPONDYLOLYSIS WITH L4 OVER L5 GRADE-1 ANTEROLISTHESIS (M43.16)**' @30% for life as **aggravated** by service, **composite disabilities @51% for life**. Accordingly, the applicant was granted disability element of disability pension @30% rounded off to @50% for life. But the applicant's claim for grant of disability element of disability pension for the first disability was rejected vide letter dated 26.09.2022. The applicant preferred First Appeal which too was rejected vide letter dated 12.07.2023 which was communicated to the applicant vide letter dated 01.09.2023. 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 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. The second disability of the applicant has been regarded as aggravated by military service by the RMB, as such the applicant was granted disability element @30% for life which was rounded off to 50% for life. The first disability of the applicant has been regarded as neither attributable to nor aggravated by service (NANA) by the RMB. The first disability of the applicant i.e. **'PRIMARY HYPERTENSION (I 10.0)'** and was also contracted during the service, hence it is also attributable to and aggravated by Military 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%.

4. On the other hand, Ld. Counsel for the respondents contended that the second disability of the applicant @30% for life has been regarded as aggravated by service, hence, he was granted disability element @30% rounded off to 50% for life. He further contended that first disability i.e. **'PRIMARY HYPERTENSION (I-10.0)'** of the applicant @30% for life has been regarded as NANA by the RMB, hence applicant is not entitled to disability element of disability pension for the first disability in terms

of Regulation 53(a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that *“An individual released/retired/discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20% or more”*. He further submitted that Para 43 of Chapter VI of Guide to Medical Officers (Military Pension), 2008 stipulates that *“Primary Hypertension will be considered aggravated if it occurs while serving in Field Areas, HAA, CI Ops areas or prolonged afloat service”*. In the instant case, onset of disability Primary Hypertension occurred in July, 1999 while the applicant was posted at 4002 Field Hospital which was located in peace military station i.e. Ambala Cantt., Haryana, hence, RMB declared his aforesaid disability as NANA by military service. In the He pleaded for dismissal of the Original Application.

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 two folds:-

- (a) Whether the first disability i.e. '**PRIMARY HYPERTENSION (I 10.0)**' 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 pension for the first disability also?

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 first disability '**PRIMARY HYPERTENSION (I-10.0)**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in July, 1999 while posted in Peace location (Ambala Cantt.), therefore, applicant is not entitled to disability element of disability pension for the first disability. 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 for the

first disability is 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 Indian Army on 23.02.1995 and the first disability has started after more than 18 years of Army service i.e. in October, 2013. 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 i.e. '**PRIMARY HYPERTENSION (I-10.0)**' of the applicant should also be considered as aggravated by military 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 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."*

9. 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.

10. 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(01)/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @51% for life to be rounded off to 75% for life may be extended to the applicant from the next date of his discharge.

11. In view of the above, the **Original Application No. 1221 of 2023** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension for the first disability '**PRIMARY HYPERTENSION (I-10.0)**' are set aside. Be it mentioned that the applicant's second disability has already been regarded as aggravated by military service and the applicant is getting disability element @30% rounded off to 50% for life. The first disability of the applicant is also held as aggravated by Army Service. The applicant is held entitled to get disability element @51% for life which would be rounded off to 75% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @51% for life which would stand rounded off to 75% for life from the next date of his discharge. The disability

element of disability pension paid @50% from the next date of applicant's discharge shall be adjusted from the arrears. 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

12. No order as to costs.

(Maj. Gen. Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 02 December, 2024

AKD/-