

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 214 of 2021**Monday, this the 25th day of October, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 14876561-W Ex. HMT Satyavir Singh, S/o Shri Late Ram Diya, R/o Village & P.O. – Sama, Tehsil & District – Baroda Gujrat, Presently Residing at H. No. 592-Ka/668, Subhani Khera, Telibagh, District – Lucknow.

..... Applicant

Ld. Counsel for the : **Shri Parijrat Belaura**, Advocate.
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Head Quarters, Ministry of Defence, South Block, New Delhi.
3. Officer-in-Charge, EME Records, PIN-900453, C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

.....**Respondents**

Ld. Counsel for the : **Dr. S.N. Pandey**, Advocate
Respondents. Central Govt. Counsel

ORDER**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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) To setting aside of order dated 24.01.2000 (after calling for records), Order dated 21.09.2017 (Anx-1) and Order dated 04.10.2018 (Anx-2).*
- (II) To Grant Disability Pension @20% for two years wef 01.04.1999 and further direct Opposite Parties to hold R.S.M.B. to assess condition of applicant for grant of Disability Pension for rest of life.*
- (III) To round off the disability pension from 20% to 50% as per GOI, MoD letter dated 31.01.2001.*
- (IV) To pay arrears of disability pension along with 12% interest from the date of his release i.e. 01.04.1999 till it is actually paid.*
- (V) Any other suitable relief this Hon’ble Court deems fit and proper may also be granted. ”*

2. Briefly stated, applicant was enrolled in Indian Army on 30.03.1979 and was discharged on 31.03.1999 in Low Medical Category on his unwillingness to continue in alternative employment under Rule 13(3) of the Army Rules, 1954. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Baroda on 30.01.1999 assessed his disabilities (i) **‘PRIMARY HYPERTENSION’ @ 20%** for two years and (ii) **‘OBESITY (401, 278)’ @Nil, composite disabilities @20% for two years** but opined the disabilities to be neither attributable to nor aggravated (NANA) by military service. The initial claim of disability was rejected by the Principal Controller of Defence Accounts (Pensions), Allahabad. The applicant preferred First Appeal and Second Appeal which too were rejected by the respondents vide letter dated 21.09.2017 and 04.10.2018

respectively. 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 Indian 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 diseases of the applicant were contacted during the service, hence they 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 pension as well as arrears thereof. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that composite disabilities of the applicant i.e. have been regarded as 20% for two years by RMB. However, since the disabilities were opined by RMB to be neither attributable to nor aggravated by military service his claim for grant of disability pension was not granted. 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

Invalidating Medical Board proceedings and we find that the questions which need to be answered are of two folds :-

- (a) Whether the disabilities of applicant are attributable to or aggravated by military service?
- (b) Whether the applicant is entitled for the benefit of rounding off of his 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 first disability '**PRIMARY HYPERTENSION**' to be neither attributable to nor aggravated (NANA) by military service and not connected with service. The applicant was enrolled in Indian Army on 30.03.1979 and the disability has started after more than 16 years of Army service i.e. on 08.03.1997. We are therefore of the considered opinion that the reasons given in RMB for declaring first disease as NANA are brief and cryptic in nature. Therefore, benefit of doubt in these circumstances should be given to the applicant in view of the law settled on this matter by ***Dharamvir Singh vs Union of India & Ors*** (supra) and the first disability of the applicant should be considered as aggravated by military service, as such the applicant is entitled for the disability

element of disability pension for two years from the next date of his discharge. With regard to second disability i.e. '**OBESITY**' we are agree with the opinion of RMB as NANA as it is a life style disease.

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. 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)***, we are of the considered view that benefit of rounding off of disability pension @ 20% for two years to be rounded off to 50% for two years may be extended to the applicant from the next date of his discharge.

10. Since the applicant's RMB was valid for two years w.e.f. 31.03.1999, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension.

11. In view of the above, the **Original Application No. 214 of 2021** deserves to be allowed, hence, **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The first disability of the applicant is held as aggravated by military service. The applicant is entitled to get disability element of disability pension @20% for two

years to be rounded off to 50% for two years from the next date of his discharge i.e. 31.03.1999. The respondents are directed to grant disability element to the applicant @20% for two years which would stand rounded off to 50% for two years from the next date of his discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 25 October, 2021

AKD/-