

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 568 of 2020**Tuesday, this the 05th day of October, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 14555792K Nk. Swarup Narain (Retd.), S/o Shri Ramprakash, Resident of Adda Tila, shivpuri Shala, PO – ITI, District – Etawa (UP) PIN-206002.

..... Applicant

Ld. Counsel for the Applicant : **Col. Y.R. Sharma (Retd.)**, Advocate.

Versus

1. Ministry of Defence, Through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Army Headquarters, South Block, New Delhi-110011.
3. Adjutant General, ADG (PS), AG’s Branch, IHQ of MOD (Army), Army Headquarters, New Delhi-110011.
4. Officer in Charge Records, Defence Security Corps Records, PIN – 90127, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....**Respondents**Ld. Counsel for the Respondents. : **Shri Amit Jaiswal**, Advocate
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 :-

- (A) *Set aside/quash the Release Medical Board held from 06/08 Feb 2017 at Section Hospital Bharatpur which accepted disability element at 30% for life but held it Neither Attributable Nor Aggravated by military service due to onset being in peace station. NATA part may please be quashed/set aside being against the Regulation. The IMPUGNED Release Medical Board proceedings are filed with the Original Application as Annexure – 2.*
- (B) *Set aside/quash the rejection order of initial claim of the disability pension by Records Defence Security Corps, vide their letter No. Pen/DP-4/14555792K dated 26 May 2017, addressed on the old home address of the applicant which was received on 10 Jun 2026. The Impugned Order is filed with the Original Application as Annexure A-3.*
- (C) *Set aside/quash the Additional Directorate General Personnel Services, AG's Branch (First Appellate Committee) letter No. B/40502/645/2018/AG/PS-4 (Imp-II) dated 30 January, 2019. The Impugned Order was communicated to the applicant by Defence Security Corps Records vide their letter No. Pen/DP (T-5) 14555792K/1st Appeal dated 06 March 2019 which was received by the applicant in the last week of March/1st week of April, 2019, due to changed address. The Impugned Order is filed with Original Application as Annexure A-7.*
- (D) *Direct Respondents to grant 30% disability element of pension to be rounded of to 50% for disability CAD CSA SVDP/PCI LAD IX DES NORMAL. LV FUNCTION (120.9) for life treating it as Attributable to Aggravated by Military service in terms of Para 423 of*

Regulations for the Medical Services of Armed Forces.

- (E) Direct the Respondents to pay an interest @12% per annum on the arrears with effect from date of retirement from Defence Security Corps.*
- (F) Issue/Pass an order or direction as the Honourable Tribunal may deem fit in the circumstances of the case.*
- (G) Allow this Original Application with costs.*

2. Briefly stated, applicant was initially enrolled in the Corps of EME of Indian Army on 07.05.1983 and was discharged on 31.05.1999 in Low Medical Category after rendering 15 years, 10 months and 25 days of service. Thereafter, the applicant was re-enrolled in Defence Security Corps on 30.06.2001 and was discharged on 31.05.2017 (AN) on his own request on compassionate ground under Rule 13 (3) Item III (iv) of the Army Rules, 1954 after rendering 15 years 11 months and 01 day of service. At the time of discharge from DSC service, the Release Medical Board (RMB) held at Military Hospital, Agra in February, 2017 assessed his disability '**CAD CSA SVD P/PCI LAD IX DES NORMAL LV FUNCTION (I 20.9)**' @30% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 26.05.2017. The applicant preferred First Appeal which too was rejected vide letter dated 30.01.2019 which was communicated to the applicant vide letter dated 06.03.2019.

The applicant preferred Second Appeal dated 21.11.2019 but of no avail. 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/DSC and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army/DSC. The disease of the applicant was contacted during the service, hence it is attributable to and aggravated by Military/DSC 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, as applicant is also entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @ 30% for life has been regarded as NANA by the RMB, hence applicant is not entitled to disability pension. 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 of two folds:-

- (a) Whether the disability of the applicant is attributable to or aggravated by Military/DSC Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the 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 '**CAD CSA SVD P/PCI LAD IX DES NORMAL LV FUNCTION (I 20.9)**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in December, 2015 while posted in Peace location (Bhuj), therefore, applicant is not entitled to disability pension. 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 military/DSC training and associated stress

and strain of military/DSC service. The applicant was enrolled in Indian Army on 07.05.1983 and in DSC on 30.06.2001 and the disability has started after more than 14 years of DSC service i.e. in December, 2015. 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/DSC 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. 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.”

10. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off of disability pension @ 30% 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.

11. In view of the above, the **Original Application No. 568 of 2020** deserves to be allowed, hence **allowed**. The impugned orders dated 26.05.2017, 30.01.2019 and 06.03.2019 annexed as Annexure Nos. A-3 and A-6 with Original Application, rejecting the applicant's claim for grant of disability element of disability pension are set aside. The disability of the applicant is held as aggravated by Army/DSC Service. The applicant is entitled to get disability element @30% 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 element to the applicant @30% 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 05.11.2020. 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.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 05 October, 2021

AKD/-