

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)**

Original Application No. 272 of 2023

Tuesday, this the 20th day of September, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

No. 4084486X L/NkNaresh Naudiyal, S/o Shri Sobha Ram Naudiyal, R/o Village - Pujeli, Tehsil Purola, District – Uttarkashi – 249185, Uttarakhand.

..... Applicant

Ld. Counsel for the Applicant : **Shri Kishore Rai, Advocate**

Versus

1. Union of India, Ministry of Defence through its Secretary, Sought Block, New Delhi- 110001.
2. PCDA (P), Allahabad, Uttar Pradesh.
3. Chief of Army Staff, IHQ MoD (Army) South Block, New Delhi - 110001.
4. Sr. Record Officer, Records The Garhwal Rifles, Lansdowne, Pauri Garhwal, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents: **Shri Rajesh Sharma,
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, whereby the applicant has sought following reliefs:-

- “i. A direction to the respondents to grant the benefit of the rounding off the disability pension to the tune of 100% to the applicant from the date of discharge along with arrears as the applicant is entitled for broad banding of disability pension under the rules..*
- ii. To summon the entire records of the applicant pertaining to computation of disability pension rounding off to the tune of 100% to the applicant from the date of discharge along with arrears as the applicant is entitled for broad banding of disability pension under the rules.*
- iii. Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Army on 25.11.2001 and discharged on 30.11.2018 in Low Medical Category on fulfilling the completion of his service limit. At the time of discharge from service, the Release Medical Board (RMB) held at MH Meerut on 13.11.2018 assessed his disabilities ‘**PRIMARY HYPERTENSION**’ @ 30% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. Applicant was denied disability element for the disability ‘**PRIMARY HYPERTENSION**’ being NANA. The disability ‘**DIASEMINATED**

TBUERCULOSIS WITH CNS TUBERCULOSIS'was assessed @ 70% for two years. The applicant was granted disability element for the disability for '**DIASEMINATED TBUERCULOSIS WITH CNS TUBERCULOSIS**' @ 70% which was rounding off @75% for two years. On 01.02.2021, Resurvey Medical Board of the applicant was held at Military Hospital, Dehradun and only second disease of the applicant i.e. '**DIASEMINATED TBUERCULOSIS WITH CNS TUBERCULOSIS**' was assessed and opined @ 70% for life. Applicant was granted 70% disability element which was rounded off to 75%. Applicant preferred claim for grant of disability element for the disability '**PRIMARY HYPERTENSION**' @ 30% for life and to round off both the disabilities @ 100% for life which was denied by the respondents. 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. At the time of discharge, Release Medical Board (RMB) had assessed his disability '**PRIMARY HYPERTENSION**'@ 30% for life but considered it as NANA. The second disability '**DIASEMINATED TBUERCULOSIS WITH CNS TUBERCULOSIS**'was assessed @70% for two years and considered as attributable to Military Service. Applicant was granted 70% disability element for two years

which was rounded of to 75% vide PPO dated 14.03.2019. In the year 2020, Resurvey Medical Board of the applicant was held at MH Dehradun which assessed only second disability i.e. **'DIASEMINATED TBUERCULOSIS WITH CNS TUBERCULOSIS'** @70% for life and considered as attributable to military service. Applicant is already getting 75% disability element for the 2nd disability i.e. **'DIASEMINATED TBUERCULOSIS WITH CNS TUBERCULOSIS'**. Learned counsel for the applicant submitted that the disease **'PRIMARY HYPERTENSION'** was contracted during the service, hence it is attributable to and aggravated by Army Service. He further stated that applicant is entitled disability element @ 30% for life for the disease. **'PRIMARY HYPERTENSION'** and both the disabilities should be rounded of to 100% for life. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension and its rounding off to 100%.

4. On the other hand, Ld. Counsel for the respondents contended that applicant was granted service pension with effect from 01.12.2018 vide PPO dated 09.10.2018. The applicant was also granted disability element for two years for the disability **'DIASEMINATED TBUERCULOSIS WITH CNS TUBERCULOSIS'** vide PPO dated 14.03.2019. After two years, Resurvey Medical Board for reassessment of disability of the applicant was held at Military Hospital Dehradun on 01.02.2021.

RMB had already made assessment for disability '**PRIMARY HYPERTENSION**' as 30% for life, hence only second disease of the applicant i.e. '**DIASEMINATED TBUERCULOSIS WITH CNS TUBERCULOSIS**' was assessed by RSMB and declared @ 70% for life. Applicant was granted 75% disability element vide PPO dated 03.09.2021. Disability '**PRIMARY HYPERTENSION**' was assessed as NANA by RMB and onset of disease took place during posting at peace station (Banbasa), Uttarakhand, hence applicant was denied disability element in terms of Regulation 153 of Pension Regulations for the Army 2008 (Part – I).). He stated that disability '**DIASEMINATED TBUERCULOSIS WITH CNS TUBERCULOSIS**' was assessed @ 70% for life and considered as attributable to service hence, he was granted disability element @ 70% rounded of to 75% for life in accordance with rules. Since, disability of the applicant i.e. '**PRIMARY HYPERTENSION**' was considered as NANA, applicant was denied for grant of disability element for this disease. The relief sought by the applicant to grant disability element for '**PRIMARY HYPERTENSION**' @ 30% for life and to round of both the disabilities @ 100% is contrary to the existing policy. He pleaded that instant O.A. has no substance and is liable 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 and Re-survey medical board proceedings

as well as the records and we find that the question which needs to be answered is of two folds :-

(a) Whether the disability of the applicant i.e. '**PRIMARY HYPERTENSION**' is attributable to service?

(b) 'What percentage of disability element applicant is entitled after rounding off'?

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 '**PRIMARY HYPERTENSION**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability took place while posted in Peace location, 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 and associated stress and strain of military service. The applicant was enrolled in Indian Army on 25.11.2001 and the disability '**PRIMARY HYPERTENSION**' first diagnosed after more than 08 years of Army Service i.e. in the year June 2009. 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 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) SLR445, 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 observed in the preceding paragraphs, delay in filing the Original Application. has been condoned by this Tribunal vide order dated 14.03.2023, 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 disability element for both the disabilities be rounded off to 100% for life may be made applicable to the applicant from three preceding years from the date of filing of the O.A.

11. In view of the above, the **Original Application No. 272 of 2023** deserves to be allowed, hence **allowed**. The impugned order, rejecting the applicant's claim for grant of disability element for the disability "**PRIMARY HYPERTENSION**" and its rounding is set aside. The applicant is entitled disability element for the disability "**PRIMARY HYPERTENSION**" @ 30% for life and disability element for the disability '**DIASEMINATED TBUERCULOSIS WITH CNS TUBERCULOSIS**' @ 70% for life which shall be rounded of to 100% for life with effect from three years prior to the date of filing of this Original Application. The date of filing of this Original Application is 13.03.2023. The arrears of disability element shall be paid to the applicant after adjusting amount already paid. The respondents are 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 actual payment.

12. No order as to costs.

13. Learned counsel for the respondents has orally prayed to grant leave to appeal against the above order which we have considered and no point of general public importance being involved in the case, prayer for leave to appeal is rejected.

(Vice Admiral Atul Kumar Jain) (Justice RavindraNathKakkar)
Member (A) Member (J)

Dated: 20th Sep, 2023
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