

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 799 of 2021**Thursday, this the 19<sup>th</sup> day of October, 2023**Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)**  
**Hon'ble Lt Gen Anil Puri, Member (A)**

Ex NK Satyendra Narayan Dubey, aged about 36 years, son of Sri Nathuni Dubey, r/o Omex R-II, Tower No-15, Flat No 1702, Lucknow

..... **Applicant**

Ld. Counsel for the Applicant:

**Col A.K. Srivastava (Retd)**  
**Ms Hemlata**  
**Shri Amarendu Srivastava**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, Integrated HQ of Ministry of Defence (Army), South Block, New Delhi – 110011.
3. Commanding officer, 17 Mech Inf (R&Sp) TR Bn, C/O 56 APO PIN-011726
4. OIC Records, Records The Mech Inf, Ahmednagar.
5. Principal Controller of Defence Accounts (PCDA (P), Allahabad

..... **Respondents**Ld. Counsel for the Respondents : **Shri Amit Jaiswal**  
Central Govt Counsel.

## ORDER

**“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, 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) *Issue/pass an order or direction of appropriate nature to summon and quash/set aside impugned order passed by the respondent vide HQ 11 Inf Div Order No 34/1/Discp/17 MI/A3 dated 11 Jul 2020 directing administrative dismissal of the applicant from service w.e.f. 20/07/2020 (Annexure No. A-1)*

(b) *Issue/Pass an order or direction of appropriate nature to summon and quash/set aside respondents orders denying re-instatement of the applicant in service w.e.f. 12/07/2021 with entitled pay & allowances.*

(c) *Issue/pass an order or direction of appropriate nature to the respondents to consider his last Re-cat/Review Medical Board dated 12.07.2017 as IMB and grant 80% disability pension consisting of service element and disability element of pension duly rounded off to 100% in terms of MoD letter No 1(2)/97/D(Pen-C) dated 31 Jan 2001 duly supported by Hon’ble Supreme Court in Civil Appeal No 5591 of 2006 titled as KJS Buttar vs UOI & Ors and Civil Appeal No 418 of 2012 titled UOI & Ors vs Ram Avtar.*

(d) *Issue/pass an order or direction of appropriate nature to the respondents to grant entitled 80% war injury disability pension duly rounded to 100% to the applicant w.e.f. 12.07.2020 i.e. the date he has been dismissed/invalid out/discharged from service even if a IMB/RMB is constituted post dismissal/discharge/invalid out from service.*

(e) *Issue/Pass an order or direction of appropriate nature to the respondents to assess disability percentage of his disability due to ABN head of femur and both hips and its connectivity with military service for which he was placed in medical category P3(P) wef 26.02.2019 and then add it on to the disability which was already assessed as 80% in re-cat Medical Board dated 12.07.2017 (A-6) and to arrive at appropriate composite disability and thereby grant him his entitled disability element of pension duly rounded off to 100% alongwith attendance allowance.*

(f) *Issue/pass an order or direction of appropriate nature to the respondents to reimburse expenditure incurred by the applicant on account of management and treatment of his disabilities.*

(g) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case*

(h) *Allow this application with costs and 18% rate of interest on arrears.*

2. Briefly stated, the applicant was enrolled in the Army on 27.07.2002. While he was posted in field area in J&K, fell ill on 29.04.2013 and was hospitalised for treatment in Military Hospital Doda (J&K). Medical Board was held and his medical category was downgraded to S1H1A1P3(P)E1 w.e.f. 24.10.2013 . Since then, he remained in low medical category. Due to his continued low medical category and non availability of sheltered appointment, his discharge order under AR 13 (3) III (iii) (a) (i) was issued. He was sent on leave from 15 Sep to 09 Nov 2019 to complete his discharge documents. While on leave, on 17 Sep 2019, he was convicted under IPC 307,324,341 for an old case which was filed against him. He was awarded 10 years rigorous imprisonment by Hon'ble Additional District & Sessions Judge, Second Kaimur, Bihar. Due to this punishment, his discharge order issued earlier was cancelled and under the provisions of Para 423 of Regulations for the Army, AA Sec 20 (3) read in conjunction with AR 17 he was dismissed from service w.e.f. 12.07.2020 by following proper procedure. Now the applicant is praying for quashing of dismissal order, re-instatement in service and also granting of disability pension as well as war injury pension.

3. Learned Counsel for the applicant submitted that his service was terminated by the respondents w.e.f. 12.07.2020 in spite of the fact that he had been enlarged on bail w.e.f. 17.06.2020 and while his Criminal Appeal was pending adjudication in the Hon'ble High Court of Judicature at Patna. After granting Bail, applicant went to his unit on 22.06.2020 but was not allowed to enter in the unit gate on orders of his Commanding Officer on pretext of COVID-19 restrictions. He then spoke to Commanding Officer on phone and requested him for permission to join his duty but Commanding

Officer told him to go back to his home and assured him that he would get necessary orders from higher Headquarter and intimate him. Before moving from the unit gate, applicant handed over a written representation dated 22.06.2020 to the sentry at unit gate for early sympathetic action, but no action was taken by Commanding Officer and instead he received a whatsapp message from the unit that he has been dismissed from service w.e.f. 12.07.2020. The applicant submitted a representation to the Commanding Officer requesting either to allow him to join the duty or grant pension and other pensionary benefits as he had rendered more than 20 years of unblemished service before conviction, but it was not considered.

4. Ld. Counsel for the applicant further submitted that prior to his dismissal from service, it was mandatory on part of the respondents to organise his Release/Invalid Medical Board as he was suffering from various ailments from 24 Oct 2013. He suffered with '**CHRONIC KIDNEY DISEASE RENAL TRANSPLANT RECIPIENT and RECURRENCE OF FSGS IN TRANSPLANT KIDNEY** w.e.f. 25.07.2016 and '**B/L AVN Head of Femur** w.e.f. **Oct 2017**'. The diseases with which the applicant had suffered are mentioned in various Medical Boards held on 24.10.2013, 08.05.2014, 29.11.2014, 29.07.2015, 25.07.2016, 12.01.2017, 07.08.2018 and 27.02.2019. Both the disabilities were considered as Attributable to Military Service and assessed @20% and @80% respectively vide Medical Board Proceedings Categorisation dated 07.08.2018 and 27.02.2019. Based on these disabilities and also not availability of sheltered appointment in the unit, his discharge was sanctioned under Army Rule 13 (3) III (iii) (a) (i).

5. Ld. 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 disease of the applicant was contracted during the service; hence it was regarded as aggravated by Military Service by the Medical Board. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension @100% with Constant Attendance Allowance.

6. Ld Counsel for the applicant further pleaded that since the applicant had rendered more than 20 years of service before being sent to Jail, he be allowed pension with pensionary benefits and also disability pension @100% with constant attendance allowance as he had suffered with the disabilities during military service which were considered as attributable.

7. On the other hand, Ld. Counsel for the respondents contended that the applicant was enrolled in the Army on 27.07.2002 and had served for more than 20 years before being dismissed by an Dismissal order passed by HQ 11 Inf Div order No 3400/1/Discp/17MI/A3 dt 11.07.2020 on 11.07.2020 under Para 423 of Regulations for the Army 1987, Army Act Sec 20 (3) read in conjunction with Army Rule 17 on account of his conviction under IPC Act Sec 307 and 341 by Criminal Court.

8. The case is that an FIR was lodged against the applicant on 20.10.2011 in his village while in service, but neither any intimation was given by police authorities nor the applicant informed the unit in any manner about the same. The applicant was sent on leave for completion of

his discharge papers. When he did not rejoin the unit after leave, the unit enquired about his whereabouts, then the Unit came to know through his cousin brother that he has been convicted on 17.09.2019 with 10 years Rigorous Imprisonment and presently in Jail. Immediately the unit processed the case for stoppage of his payment/salary. Since he was convicted under IPC Sec 307,324 and 341 with 10 years Rigorous Imprisonment, action was taken to dismiss him from service under Para 41 of Pension Regulations for the Army 2008 (Part I) which clearly stipulates that the persons who have been dismissed from service under the provisions of Army Act 1950 or removed under the Rules made there under as a measure of penalty, will be ineligible for pension or gratuity in respect of all previous service. Finally he was dismissed from service w.e.f. 12.07.2020 without any pension and pensionary benefits.

9. He further submitted that applicant cannot be granted disability pension as per Para 173 of Pension Regulations for the Army 1961 (Part-I), which stipulates *'unless otherwise specifically provided a Disability Pension consisting of Service Element and Disability Element may be granted to an individual who is invalided out of service on account of disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over.* Since the applicant has been dismissed from service by an Dismissal order passed by HQ 11 Inf Div vide order No 3400/1/Discp/17MI/A3 dt 11.07.2020 on 11.07.2020 under Para 423 of Regulations for the Army 1987, Army Act Sec 20 (3) read in conjunction with Army Rule 17 on account of his conviction under IPC Act Sec 307 and 341 by Criminal Court, he is not authorised disability pension.

10. Ld Counsel for the respondents further submitted that the claim of the applicant for re-instatement into service by quashing dismissal order, grant of pension with pensionary benefits and grant of disability pension with Constant Attendance Allowance are not tenable in the eyes of law and O.A. be dismissed having no merit and substance.

11. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through Army Regulations, Release Medical Board proceedings as well as the records and find that the questions which need to be answered are of two folds:-

*(a) Whether the applicant is entitled to pension and pensionary benefits after his conviction under IPC Act 307, 324 and 341 by a Criminal Court and award of 10 years rigorous imprisonment and later dismissal from service under the provisions of Para 423 of Regulation for the Army (Vol-I), Army Act Section 20 (3) read in conjunction with Army Rule 17?*

*(b) Whether the applicant is entitled for disability pension/war injury pension and benefit of its rounding off after his dismissal from service after conviction by a Criminal Court under the provisions of Para 423 of Regulation for the Army (Vol-I), Army Act Section 20 (3) read in conjunction with Army Rule 17?*

12. Para 423 of Regulation for the Army (Vol-I) , Army Act Section 20(3) and Army Rule 17, and ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10<sup>th</sup> December 2014) are reproduced below :-

**(a) Para 423 of Regulation for the Army (Vol-I) 1987**

**423. Conviction of Officers, JCOs, WOs and OR by the Civil Power**

*The conviction of an officer by the civil power will be reported to the Central Government and that of a JCO to the Chief of the Army Staff for such action as these authorities see fit to take. The conviction of a WO or OR will be*

reported to the Brigade/Sub Area Commander who will decide whether dismissal, discharge or reduction is desirable.

*The disciplinary authority may, if it comes to the conclusion that an order with a view to imposing a penalty on a Government servant on the ground of conduct which had led to his conviction on a criminal charge should be issued, issue such an order without waiting for the period of filing an appeal or, if an appeal has been filed without waiting for the decision in the first court of appeal.*

**(b) Army Act, 1950 (Section 20(3))**

**20. Dismissal, removal or reduction by the Chief of the Army Staff and by other officers.**

(1). xxx xxx xxx

(2). xxx xxx xxx

(3) *An officer having power not less than a brigade or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a junior commissioned officer.*

**(c) Army Rule 17**

**17. Dismissal or removal by Chief of the Army Staff and by other officers**

*Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court or a court-martial, no person shall be dismissed or removed under sub-section*

*(1) or sub-section (3) of section 20; unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service: Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule, he may after certifying to that effect, order the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government.*

13. Keeping in view of the regulations cited above, we are of the considered view that directions passed by General Officer Commanding, 11 Infantry Division for termination of service of the applicant on conviction under IPC Act Sec 307, 341 and award of 10 years Rigorous imprisonment by Hon'ble Additional District & Sessions Judge, Second Kaimur (Bhabhua), Bihar is as per the Regulations and we find no reason to

interfere in it and the dismissal was done as per policy. As such applicant is not entitled to Service Pension and pensionary benefits.

14. As regards grant of disability pension to the applicant is concerned; the applicant had rendered more than 20 years of service and during service period only he had suffered with two disabilities i.e. (a) **B/L Head of Femur (M87.85)** and (b) **'CHRONIC KIDNEY DISEASE RENAL TRANSPLANT RECIPIENT and RECURRENCE OF FSGS IN TRANSPLANT KIDNEY'** and both disabilities have been considered as Attributable to Military Service and assessed @20% and @80% respectively in the Medical Board Proceedings dated 07.08.2018 and 27.02.2019, we are of the opinion that his dismissal should be converted into discharge for the purpose of disability pension only and he be granted disability pension.

15. In para 17 A (a) of Chapter VII of the Guide to Medical Officer (Military Pensions), 2002, the provision for composite assessment has been mentioned which reads as under:-

**“17A. Composite Assessment**

*(a) Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment will be the arithmetical sum of their separate assessment. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping. There is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases. This is not correct.”*

16. In the instant case there are functional effects of the first and second disabilities overlapping, as such composite assessment is to be reduced in proportion to the degree of overlapping. The degree of first disability is @20% and second disability is @80% for which we are of the view that there is some overlapping. Accordingly, we hold that composite assessment of first and second disabilities is less than 100%.

17. As the applicant's disability is held less than 100%, he is not entitled for the Constant Attendance Allowance.

18. 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 10<sup>th</sup> 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 invalided 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 Court's 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."*

19. 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 pension which is less than 100% for life be rounded off to 100% for life and extended to the applicant from the next date of his discharge.

20. As regards prayer made for grant of war injury disability pension is concerned, we have gone through Govt of India Ministry of Defence letter No 1(2)/97/D (Pen-C) dated 31.01.2001 and found that none of the provisions are applicable in the instant case thus the applicant is ineligible for the same.

21. In view of the above, the **Original Application No. 799 of 2021** deserves to be partly allowed, hence **partly allowed**. The dismissal of the applicant is hereby converted into discharge for the purpose of disability pension only. The impugned order, rejecting the applicant's claim for grant of disability pension is set aside. The disabilities of the applicant have been held as attributable to Military Service by the Medical Boards, thus the applicant is entitled to get disability pension less than @100% for life which

would be rounded off to 100% for life from the next date of his discharge from service i.e. 12.07.2020. The respondents are directed to grant disability pension to the applicant less than @100% for life which would stand rounded off to 100% for life from the next date of his discharge. 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

22. No order as to costs.

23. Departmental Representative for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

(Lt. Gen. Anil Puri)  
Member (A)

(Justice Ravindra Nath Kakkar)  
Member (J)

Dated : Oct, 2023

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