

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
CURCUIT BENCH AT NAINITAL**

ORIGINAL APPLICATION No. 727 of 2022

Thursday, this the 21st day of September, 2023

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

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

IC 46197A, Col. Jagjeet Singh Rautela, S/o Late R.C. Rautela, R/o House No. 49, Khajanchi Mohalla, Almora, District – Almora, Uttarakhand, Presently Residing at 9 Deodiyam, Royal Enclave Kamaluwaganja, Narsingh Talla, Near Girja Vihar, Haldwani, District – Nainital, Uttarakhand.

..... Applicant

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

Versus

1. Union of India, Ministry of Defence, through its Secretary, South Block, New Delhi -110001.
2. P.C.D.A. (P) Allahabad, Uttar Pradesh.
3. Additional Directorate General of Manpower (Policy Planning)/ MP6(E), Adjutant General’s Branch, Integrated HQ of MoD (Army), West Block –III, R.K. Puram, New Delhi -110066.
4. Chief of the Army Staff, Army Headquarter, New Delhi.

.....Respondents

Ld. Counsel for the : **Shri Neeraj Upreti**, Advocate
Respondents. 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 :-

- i. A direction to quash the order dated 22.07.2022 passed by respondent No.3 (contained as Annexure No.4 to this original application) or to.*
- ii. A direction to grant the disability pension to the applicant from the date of his retirement i.e. 30.06.2021 along with rounding off to the tune of 50%.*
- iii. To summon the entire records of the applicant pertaining to computation of his disability.*
- iv. Any other relief to which the applicant is found entitled may be also kindly be granted to the applicant.*

2. Briefly stated, applicant was commissioned in the Indian Army on 20.08.1988 and retired on 30.06.2017. The applicant was re-employed in the Indian Army in October, 2017 and retired from re-employment on 30.06.2021 (AN) on completion of re-employed service. At the time of retirement from re-employed service, the Release Medical Board (RMB) held at Military Hospital, Ranikhet on 30.04.2021 assessed his disabilities (i) **‘PRIMARY HYPERTENSION (I-10)’ @ 30% for life** and (ii) **‘TYPE-II DIABETES MELLITUS (E-11)’ @20% for life, composite disabilities @44% for life** and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant’s claim for grant of disability pension was rejected vide letter dated 22.07.2022. 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 commissioned, 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 commissioned in Army. The diseases of the applicant were contracted during the service/re-employed service, hence they are attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of disability pension in similar cases, as such the applicant be granted disability element of 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 @ 44% for life have been regarded as NANA by the RMB, hence as per Regulation 37 of Pension Regulations for the Army, 2008 (Part-I) the applicant is not entitled to disability element of disability pension. He further contended that as per SAI 1/S/80 a re-employed officer whose employment is terminated on account of disability attributable to or aggravated by military service before completion of re-employment tenure only will be granted disability element. In the instant case the officer released from re-employment on completion of his re-employment tenure, therefore, he is not eligible for 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. After considering all issues, we have to understand the status of a re-employed officer. As per facts which are on record & have emerged during hearing following aspects of a re-employed officer are clear :-

- (a) Re-employment of Army Officers upto Colonel rank and upto the age of 57/58 is one required to cater for overall shortfall of officers in the army.
- (b) Re-employed officers are engaged in a rank lower than the one they held at the time of retirement.
- (c) They are subject to Army Act, 1950 and all rules as applicable to a Regular Army Officer are by and large applicable on re-employed officers.

6. The contention of the respondents that the applicant's re-employment period was not terminated on account of disability, hence, as per SAO 1/S/80, applicant is not entitled for grant of disability pension is not sustainable. Even otherwise the legal position on attributability has been amply clarified and amplified by the Hon'ble Apex Court in the cases of ***Dharamvir Singh vs. Union of India and Others***, reported in (2013) 7 SCC 316 and ***Sukhvinder Singh vs. Union of India & Others***, reported in (2014) STPL (WEB) 468 SC. These judgments have come after the issuance of SAI 1/S/80 for re-employed officers who for all purposes are Army Officers under Army Act, 1950. Thus, in our

considered opinion the SAI 1/S/80 does not have the statutory power to arbitrarily stop the flow of benefits to the applicant due to the above two judgments of the Hon'ble Apex Court. In addition we are also of the opinion that binding re-employed officers with Army Act, 1050, like serving officers and thereafter depriving them the benefits of disability pension similar to serving officers is violative of Article 14 of the Constitution of India.

7. 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 disabilities of the applicant are attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

8. 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 (Supra)***. 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)."

9. 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 disabilities '**PRIMARY HYPERTENSION (I-10)**' and '**TYPE-II DIABETES MELLITUS (E-11)**' are neither attributable to nor aggravated

(NANA) by service on the ground of onset of disabilities in November 2020 while posted in Peace location (Stn HQ, Ranikhet), therefore, applicant is not entitled to disability element of 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 element of 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 training and associated stress and strain of military service. The applicant was initially commissioned in Indian Army on 20.08.1988 and the disabilities have started after more than 32 years of Army service i.e. in Nov 2020. 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 both the disabilities of the applicant should be considered as aggravated by military service.

10. 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 January 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.”

11. 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.

12. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Union of India and Ors vs Ram Avtar & (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 @44% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his retirement from re-employment.

13. In view of the above, the **Original Application No. 727 of 2022** deserves to be allowed, hence **allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. Both the disabilities of the applicant are held as aggravated by Army Service. The applicant is entitled to get disability element @44% for life which would be rounded off to 50% for life from the next date of his retirement from re-employment. The respondents are directed to grant disability element to the applicant @44% for life which would stand rounded off to 50% for life from the next date of his retirement from re-employment. 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

14. No order as to costs.

15. Ld. Counsel 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.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 21 September, 2023

AKD/-