

**RESERVED
Court No. 1**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 117 of 2017

Friday, this the 27th day of July, 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal B.B.P. Sinha, Member (A)

MR- 04789H Col Puran Chandra Lohani S/o Shri (Late) Dharma Nand Lohani R/o 2/179, Vijay Khand-2 Gomti Nagar, Lucknow U.P.

..... Applicant

Ld. Counsel for the: Shri S.G. Singh, Advocate
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. The Chief of the Army Staff, Integrated Headquarter of ministry of Defence (Army), South Block, New Delhi-110011.
3. Additional Directorate General Personnel Service Adjutant General's Branch, Integrated Headquarters of the ministry of Defence (Army) Room No. 11, Plot No. 108 (West), Brassy Avenue, Church Road, New Delhi-110001.
4. Additional Directorate General Personnel Service Adjutant General's Branch/PS-4(Imp-II) Integrated Headquarters of the ministry of Defence (Army) Plot No. 108 (West), Brassy Avenue, Church Road, New Delhi-110001.

.....Respondents

Ld. Counsel for the: Shri Ashish Kumar Singh, Advocate
Respondents.

ORDER

(Per Hon'ble Air Marshal BBP Sinha, Member "A")

1. By means of this O.A. filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for disability pension, he has prayed for the following reliefs:-

“(a) Issue/Pass an order or direction of appropriate nature whereby commanding the respondents to produce the record in original and thereafter quash the order dated 22.11.2016 passed by opposite party no.3 and the order dated 21.12.2015 passed by the opposite party no.4 whereby rejecting the claim of the applicant for disability pension annexed as Annexure No.A-1(i) & A-1 (ii) respectively with the application.

(b) Issue/Pass an order or direction of appropriate nature whereby commanding the respondents to grant 50% disability pension as per the broad banding policy to the applicant forthwith.

(c) Allow the application with all consequential benefits with exemplary costs.

2. Brief facts of the case are that the applicant was commissioned in the Army Medical Corps on 27.06.1983 and he superannuated from service on 31.08.2004. Release Medical Board (RMB) held at the time of retirement opined the applicant to be suffering from ‘PRIMARY HYPERTENSION’ and assessed the disability at 30% for life. The RMB also conceded the disability to be aggravated by military service. Although the disability of the applicant was held by the RMB as aggravated by military service however the same was rejected by the higher authority i.e. PCDA (P) Allahabad stating that it is neither attributable to nor aggravated by Military service. The first appeal and second appeal preferred by the applicant were also rejected by the concerned authorities vide orders dated 21.12.2015 and 22.11.2016 respectively.

3. The learned counsel of applicant pleaded that the applicant was commissioned in the Army in a fit state and if he has developed ‘PRIMARY HYPERTENSION’ after serving 13 years in Army, it has to be considered as attributable to or aggravated by military service. Learned Counsel for the applicant has further pleaded that the

applicant was entitled for disability pension in view of Para 173 of the Pension Regulations (Part-I) 1961, since his disability for "PRIMARY HYPERTENSION" has been rightly considered as aggravated by Military service by the RMB, therefore the action of the higher authorities in overruling the recommendation of RMB without a second medical examination of the applicant, should be set aside in light of clear rulings on this matter by Hon'ble Apex Court.

4. Per contra the learned counsel for the respondents has stated that the applicant is prima facie not eligible for disability pension because his disability is neither attributable to nor aggravated by Military service as per competent authority and as also affirmed by the first and second appellate authorities. However, it has been conceded by the respondents that the applicant's disability of 'PRIMARY HYPERTENSION' was opined by the RMB as having been aggravated by military service, assessing it at 30% for life.

5. We have considered the respective submissions of the learned counsel for the parties and perused the material placed on record. For deciding the controversy in question, we need to answer the issue of aggravation of disability due to military service and the competence of higher authorities to change the recommendation of RMB.

6. Law on attributability of a disability is no more res integra and the supremacy of Release Medical Board in deciding attributability after physical examination of the patient has already been clearly established vide Hon'ble Apex Court judgment in Civil Appeal No.

164/ 1991 **Ex. Sapper Mohinder Singh vs. Union of India** decided on 14.01.1993. The observation made in the decision of **Ex.Sapper Mohinder Singh** (supra) being relevant is quoted below:

“From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core.”

Thus in light of the law settled by Hon'ble Apex Court we agree with findings of RMB which has already conceded Hypertension of the applicant as aggravated by Military service with 30% disability for life. We therefore set aside the orders passed by the authorities concerned dated 16.09.2014, 21.12.2015 and 22.11.2016 contrary to the opinion of the RMB.

7. In so far as the relief of rounding off is concerned, it is no more res integra. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014, in which Hon'ble the Apex Court has nodded in disapproval at 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. The judgment is very clear that the benefit of rounding off is also required to be extended to personnel with low medical category whose disability is attributable to military service and who have retired on attaining the age of superannuation or completion of their tenure of engagement. The relevant portion of the judgment being relevant 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.

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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.”

Hence we consider that the applicant's disability @ 30 for life is to be rounded off to 50% for life.

8. As a result of foregoing discussions, the O.A is allowed. The impugned letters/orders dated 16.09.2014, 21.12.2015 and

22.11.2016 passed by the authorities concerned rejecting the claim of the applicant for disability pension are set aside. The disability of the applicant is held to be aggravated by military service and he is held entitled to disability pension with effect from three years prior to filing this O.A. The date of filing this O.A. is 18.04.2017. The respondents are directed to grant disability pension to the applicant @ 30% for life which shall stand rounded off to 50% for life. The order is to be implemented within four months from the date of receipt of a certified copy of this order. Default shall invite interest @ 9% per annum.

9. No order as to costs.

(Air Marshal BBP Sinha)
(Member A)

(Justice S.V.S. Rathore)
(Member J)

Dated :July 27, 2018
JPT