

Court No. 1
Reserved Judgment

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW
ORIGINAL APPLICATION NO. 488 of 2017**

Monday, this the 09th day of July, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

Ex-278908 MWO BP Singh S/o Late Sukh Nand Singh R/o House No. E-29, Sector ‘B’ Sainik Vihar Colony, Nandanagar, District Gorakhpur, UP.

....Applicant

Ld. Counsel for the: **Shri Yash Pal Singh** holding
Applicant brief of **Shri Virat Anand Singh,
Advocate.**

Versus

1. Union of India and others through the Secretary, Ministry of Defence South Block, New Delhi-110011.
2. Chief of Air Staff, Integrated Headquarters of Ministry of Defence (Air Force) DHQ PO, New Delhi-110011.
3. The Air Force Record Office, Subroto Park, New Delhi-10.
4. PCDA (Pension), Draupadi Ghat, Allahabad.

.....Respondents

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

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

- (i) To set aside the finding of the*
 - (a) Medical Board dte 30 Sep 2003 and*
 - (b) PCDA (P) dte 25 Nov 2005 and*
 - (c) FIRST APPEAL finding dte 07 March 2006 and direct respondents to pay Applicant Disability Pension retrospectively from date of his Medical board.*
- (ii) To Direct the Respondents to apply ROUNDING-OFF of the Disability Pension in light of the present rounding off policy and pay the disability pension accordingly.*
- (iii) To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.*
- (iv) Allow this application with costs.*

2. Delay in filing this O.A. was condoned vide order dated 01.11.2017. The facts of the case in brief are that the applicant was enrolled in the Indian Air Force on 13.11.1965, where he served for a period of more than 38 years. On completion of his terms, he was discharged from service on 31.07.2004. While he was in service he was diagnosed to be suffering from primary Hypertension and Acute Appendicitis (Optd) with incision Hernia (Optd.). Release Medical Board (RMB) of the applicant was held on 30.09.2003 and his composite disability was assessed at 30% for life. Thereafter he was discharged from service on 31.07.2004. Applicant's case for disability pension was rejected by PCDA (P) Allahabad on 25.04.2005, which was communicated to the applicant vide letter dated 14.06.2005. Feeling aggrieved by

the decision of the PCDA (P) Allahabad applicant preferred first appeal which was rejected vide order dated 07.03.2006 stating that the disability is neither attributable to nor aggravated by Military Service (NANA). The ground taken by the applicant for disability pension is that the applicant had joined his service in medically fit state hence his disability is attributable to service.

3. The respondents have filed counter affidavit denying the claim of the applicant stating that he was discharged from service on attaining the age of superannuation after rendering total 38 years and 262 days of regular service. That the RMB assessed his disability ID (i) Primary Hypertension @ 30% and ID (ii) Acute Appendicitis @ 15-19% (compositely 30%) for life opining that the same is neither attributable to nor aggravated by Air Force Service. It has also been pleaded that the PCDA (P) Allahabad upheld the recommendations of RMB and rejected the disability pension claim. Accordingly it has been pleaded by the respondents that the grounds taken by the applicant are not sustainable and the applicant is not entitled to disability pension.

4. We have heard learned counsel for the applicant as also learned counsel for the respondents. We have also perused the relevant materials on record.

5. The only ground put forth by the respondents for denial of disability pension is that his disability had been opined to be neither attributable to nor aggravated by Air Force Service by Release Medical Board.

6. The law on attributability of a disability has already been well settled by Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India and Ors** 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. The above judgment has been constantly followed and further explored by the Supreme Court in **Union of India and others v. Rajbir Singh (CA No. 2904 of 2011 decided on 13.2.2015); Union of India and others v. Manjit Singh (CA No. 4357-58 of 2015 (arising out of SLP (C) No. 13732-33 of 2015) decided on 12.5.2015; Union of India v. Angad Singh (CA No. 2208 of 2011 decided on 24.2.2015); KJS Butter v. Union of India (CA No. 5591 of 2006 decided on 31.3.2011; Ex. Hav Mani Ram Bharia v. Union of India and others, Civil Appeal No. 4409 of 2011 decided on 11.2.2016; Satwinder Singh v. Union of India OA 621 of 2014**

Bharat Kumar Vs UOI & Ors.; OA 1235 of 2014 Hoshiar Singh Vs UOI & Ors. and 480 of 2015 Jasbir Singh Vs UOI & Ors. 18 and others Civil Appeal No. 1695 of 2016 (arising out of SLP (c) No. 22765 of 2011) and decided on 11.2.2016 and also in a very recent judgment of Hon'ble Apex Court in the case of Ex 6 GNR Laxman Ram Poonia vs. Union of India (2017) 4 SCC 697. Thus in light of the well settled law on attributability the disability of the applicant is to be considered as attributable to military service.

8. 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 ***K.J.S. Buttar vs. Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar and Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

9. In ***Union of India and Ors v Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10th December 2014***) in which Hon'ble the Apex Court 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 invalided 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 has retired on attaining the age of superannuation or completion of his tenure of engagement. The relevant portion of the decision 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."

10. As a result of foregoing discussions, the O.A is allowed. The impugned orders as contained in Annexures A 1(i) and A (ii) are set aside. The disability of the Applicant is held to be attributable to and aggravated by military service and he is held entitled to disability pension with effect from 03 years prior to filing his O.A. The date of filing O.A is 25.05.2017.

The disability of the Applicant which was initially assessed as 30% for life is rounded off to 50% for life. The Applicant shall be paid arrears of disability pension within four months of receiving a certified copy of this order. For default, the applicant shall be entitled to interest at the rate of 9% on the arrears aforesaid.

11. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: July 09, 2018
JPT

