

**Reserved
Court No. 1**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO 625 of 2017

Wednesday, this the 18th day of July, 2018

Hon'ble Mr. Justice SVS Rathore, Member (J)

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

No.6463257Y Ex Nk Rauf Khan of DSC, son of Shri Mahmood, resident of village Imli Darwaza, Post Office Shamshabad, district Farrukhabad, (U.P.) – 209503.

...Applicant

**Ld. Counsel for the: Shri R.N. Tripathi, Advocate.
Applicant**

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Army HQ (Sena Bhawan) New Delhi-11.
3. OIC the DSC Records, PIN 901277 C/o 56 APO.
4. PCDA (P) Draupadi Ghat, Allahabad, U.P.

.... Respondents

**Ld. Counsel for the : Dr. Shailendra Sharma Atal,
Respondents Central Government Counsel**

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

1. By means of the present O.A. the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 for grant of disability pension.

2. Brief facts as emerging from the record are that the applicant was enrolled in the Indian Army on 14.01.1975 in the Army Service Corps (AT) and was transferred to Madras Engineering Group. Having rendered 15 years and 18 days of service he was discharged on 31.01.1990 under Rule 13 (3) III (i) of the Army Rules, 1954 and he was granted service pension. Subsequently, he was enrolled in Defence Security Corps (DSC) and continued to draw his former service pension throughout his DSC service. On completion of initial term of engagement, he was granted extension of service from time to time and finally upto 04.08.2011 i.e. the age of superannuation of 55 years. He was granted enhanced service of two years from 05.08.2011 to 04.08.2013.

3. During the term of enhanced service, he was downgraded to medical category P-II (Permanent) with effect from 29.11.2011 for diagnosis of MYELO DISPLASTIC SYNDROME (MDS). Accordingly, he was transferred to the Pension Establishment with effect from 30.04.2012 after rendering 20 years, 10 months and 14 days of qualifying service. Due to down gradation of medical category, the applicant was brought before the Release Medical Board which assessed

his disability as 'neither attributable to nor aggravated by' military service and assessed his percentage of disablement at 20% for life and disability qualifying for disability pension as NIL. Consequently, his claim for disability pension was rejected. The 1st and 2nd Appeals preferred by the applicant against rejection of disability pension were rejected by the Appellate Committee on First Appeal (ACFA) and Second Appellate Committee on Pension (SACP) on the ground that the onset of the disease was in peace station with no causal connection with military service.

4. Learned counsel for the applicant submitted that at the time of entry in the Military service, the applicant was in a fit medical condition, as such, his disability should be considered as attributable to and aggravated by service and disability pension should be granted to the applicant.

5. We have heard learned counsel for the parties and perused the record. During hearing it emerged that **MYELO DYSPLASTIC SYNDROMES (MDS)** are a group of cancers in which immature blood cells in the bone marrow do not mature and therefore do not become healthy blood cells. Some types may develop into ACUTE MYELOID LEUKEMIA. One of the important risk factors which can trigger this disease includes exposure to Radiation.

6. Rebutting the arguments advanced by learned counsel for the applicant, learned counsel for the respondents defended the action of the respondents and submitted that disability pension has rightly been denied to the applicant since the applicant did not fulfill the primary conditions for grant of disability pension as laid down in Para 53(a) of the Pension

Regulations for the Army, 2008 (Part-1). It is strenuously argued that applicant's disability was assessed as 'neither attributable to nor aggravated' by Military service by the Release Medical Board with NIL percentage of disability qualifying for disability pension, hence the applicant is not entitled for disability pension.

7. Since Defence Service Corps (DSC) personnel are deployed to guard sensitive defence installations with national security implications, like Radar, Transmitters and Communication Hubs in different frequency bands, therefore, they are certainly more exposed to radiation than others due to their nature of duties and the requirement to stay 24 hours on the duty site in an open area on a regular basis. Therefore, the possibility of radiation exposure from Radar, Communication Hubs and other similar sources to DSC personnel does not reduce merely because the disease has originated in a peace area and not in field. Thus, the ground advanced by the Invalidating Medical Board that the disability was neither attributable to nor aggravated by military service because the onset of the disease was in peace station and thus has no causal connection with military service, prima facie, is not convincing and logical. Therefore, the benefit of doubt in these set of circumstances has to be given to the applicant on this matter.

8. The law on the point of attributability of disability pension and its rounding off is no more RES INTEGRA. In the case of *Dharamvir Singh vs. Union of India & Ors*, (2013) 7 SCC 316, Hon'ble the Supreme Court had considered the question with regard to payment of disability pension, their Lordships of Hon'ble Supreme Court held that an Army personnel shall be presumed to have been in sound physical

and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. In ***Dharamvir Singh's*** (supra), their Lordships further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service. Observation made by their Lordships in the case of ***Dharmvir Singh*** (supra) is reproduced as under:-

"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. Thus, in view of the above judgment and settled law on the point we are of the considered opinion that the disability of the applicant is attributable to military service. The law on the issue of rounding off of disability pension on superannuation has also been settled by Hon'ble Supreme Court. In this regard, we would like to refer to the decisions of Hon'ble the Supreme Court in the case of ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. In our view, the case is fully covered by the aforesaid decision of Hon'ble the Supreme Court and the applicant is entitled for the benefit of rounding off. For convenience sake, relevant portion of decision in the case of ***Ram Avtar*** (supra) is reproduced as under:-

“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. In view of the settled position of law on this matter, applicant's disability of 20% for life, therefore, stands rounded off to 50% for life.

11. Accordingly, O.A. No. 625 of 2017 is **allowed**. The impugned orders are set aside. The respondents are directed to grant disability pension to the applicant at the rate of 20% for life which shall stand rounded off to 50 % for life from three years prior to the filing of the present O.A. i.e. 08.09.2017. The entire exercise shall be completed by the respondents within four months from the date of production of certified copy of this order failing which the applicant shall be entitled to simple interest @ 9% per annum on the amount accrued from due date till the date of actual payment.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : July 18, 2018

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