

**E- Court No.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 166 of 2021**Tuesday, this the 31<sup>st</sup> day of August, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. 4070170L Veteran Hav Ramesh Singh, Son of Late Hony  
Nb Sub Madan Singh Bisht, Village- Balbhadrapur, PO.  
Kotdwar, District- Pauri Garhwal, PIN- 246149 (U.P.)

.....Applicant

Ld. Counsel for : **Shri Bhanu Pratap Singh Chauhan**  
Applicant **Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi 110001.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (ARMY), DHQ PO, New Delhi - 110001.
3. Additional Director General Personnel Services, Adjutant General's Branch, Integrated Headquarters of the Ministry of Defence, Room No- 11, Plot No- 108 (West) Brassey Avenue, Church Road, New Delhi- 110001.
4. Officer in Charge, Records The Garhwal Rifles, PIN- 900400, C/o 56 APO.
5. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)

.....Respondents

Ld. Counsel for the : **Dr. Chet Narayan Singh,**  
Respondents **Central Govt Counsel**

**ORDER****“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

*(a) To issue/ pass an order or direction to the respondents to set aside/quash the arbitrary order of denial of disability pension to the applicant as contained in Records The Garhwal Rifles letter No 4070107/DP dated 20.02.2008 (not attached as not received by the applicant till date), Records The Garhwal Rifles letters bearing No 4070107/DP dated 21.10.2013, dated 23.01.2017, dated 02.02.2017, dated 24.03.2017, dated 13.04.2018 and dated 20.08.2018 collectively attached and marked as Annexure A-01.*

*(b) To issue/ pass an order or direction to the respondents to set aside/ quash the arbitrary order of rejection of first appeal preferred by the applicant against denial of the disability pension as contained in The Appellate Committee on First Appeals letter No. Adjutant General Branch, IHQ of Min of Def letter No. B/40502/853/2018/AG/PS-4 (Imp-II) dated 05.07.2019 (Annexure A-02).*

*(c) To issue/ pass an order or direction to set aside/ quash the arbitrary order of rejection of the second appeal preferred by the applicant as conveyed by Second Appellate Committee vide Army Headquarters, Additional Directorate General of Personnel Services, Adjutant General Branch letter No B/38046A/574/2019/AG/PS-4 (2<sup>nd</sup> Appeal) dated 17.09.2020 (Annexure A-03)*

*(d) Issue/ pass an order or direction to the respondents to grant him 20% disability pension as assessed by the Medical Board along with benefit of rounding off to 50% being his constitutional right.*

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

*(f) Allow this application with cost.*

2. The undisputed factual matrix on record is that the applicant was enrolled in Indian Army on 23.10.1987 and was discharged from service on 01.01.2008 in low medical category A2 (Permanent) under item 13 (3) III (v) of Army Rules, 1954 on completion of terms of engagement. At the time of discharge Release Medical Board held at 159 General Hospital on 14.11.2007 assessed disability "**PERIPHERAL VASCULAR DISEASE (LEFT) LOWER LIMB (CLINICALLY TAO) M-63**" @ 20% for life and considered as neither attributable to nor aggravated by the military service. The petitioner was granted service pension from the date of retirement vide PPO dated 14.12.2007. Claim of the applicant for the grant of disability pension was rejected by the respondents vide letter dated 20.02.2008 being neither attributable to nor aggravated by military service and not related to military service. His first and second appeals for grant of disability pension were also rejected vide letter dated 05.07.2019 and 17.09.2020. Being

aggrieved, the applicant has approached this Tribunal for the grant of disability pension.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in the army in medically fit condition and, thereafter, he has been discharged from service in Low Medical Category assessed as 20% for life and considered as neither attributable to nor aggravated by military service. He pleaded for the disability of the applicant to be considered as a result of stress and strain of military service. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such, the applicant is entitled to disability pension and its rounding off to 50%.

4. Learned counsel for the respondents has not disputed that applicant suffered disability to the extent of 20% for life, but submitted that competent authority while rejecting the claim of the applicant has viewed that disability was assessed @ 20% for life but disability qualifying for disability pension has been assessed as NIL for life and disability was found as neither attributable to nor aggravated by military service and not connected with military service, therefore, in terms of Para 179 of the Pension Regulations for the Army, 1961 (Part-I), the claim of the applicant for the grant of disability pension has correctly been rejected.

5. We have heard learned counsel for the parties and perused the record.

6. The question before us for consideration is simple and straight whether disability of applicant is attributable to or aggravated by military service?

7. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** (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)."*

8. Thus, considering all issues we have noted that Release Medical Board had not given any reason in support of its opinion, particularly there is no note of such disease or disability available in the service record of the applicant at the time of acceptance for Military service. In absence of any evidence on record to show that the applicant was suffering from disease at the time of acceptance of his service and the fact that the applicant had put in over 17 years of service when for the first time the disease was detected in the year 2005, it will be presumed that the applicant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to military service. Hence in the circumstances of the case, we are inclined to give the benefit of doubt as per the law settled on this matter vide Hon'ble Apex Court decision in the case of **Dharamvir Singh** (Supra). Therefore, we consider the disease of the applicant as aggravated by military service.

9. 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. Hence the applicant is eligible for the benefit of rounding off also.

10. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

*“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”*

11. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered

view that benefit of rounding off of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

12. In view of the above the Original Application deserves to be allowed.

13. Accordingly O.A. is **allowed**. The impugned orders rejecting the claim for grant of disability pension passed by the respondents are set aside. The disability assessed as 20% for life is to be considered as aggravated by Army service. The applicant is already in receipt of service element hence the applicant is entitled to get disability element @ 20% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing this Original Application. The date of filing this Original Application is 08.03.2021. The respondents are 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 actual payment.

14. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)  
**Member (A)**

(Justice Umesh Chandra Srivastava)  
**Member (J)**

Dated : 31 August, 2021

UKT/-