

Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No 1001 of 2022

Tuesday, this the 11th day of April, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Army No: 4178336-A Ex. Nk Harish Chandra Joshi, Son of Bhuwan Chandra Joshi, R/o: Adarsh Nagar, Rewtapur Road, Post Office: Dilkusha, Tehsil: Sarojni Nagar, Nilmatha, District: Lucknow, (U.P.)- 226002 India.

-----Applicant

Ld. Counsel for the Applicant: **Shri Manoj Kumar Awasthi,
Advocate**

Versus

1. Union of India through Secretary Ministry of Defence (Army) South Block, New Delhi 110010.
2. Chief of the Army Staff, IHQ MoD(Army), Army HQ, South Block New Delhi - 110010.
3. The Officer --in- Charge, Defence Security Corps Record, Mill Road, Burncerry- Post: Kannur, Kerala - 670013
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the Respondents :**Shri RKS Chauhan,
Central Govt Counsel.**

ORDER (ORAL)

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

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

- “A. To Issue / pass an order or directions to the Respondent to grant of disability Pension from the date of discharge i.e. 30.09.2021.*
- B. To issue / pass an order or direction to the respondent No. 3 to decide the representation dated 25.04.2022. As Annexure No. 1.*
- C. To issue pass an order or directions to the respondents to grant Disability Pension @20% with effect from date of superannuation i.e. 30.09.2021 in light of Hon’ble Apex Court Judgments.*
- D. To issue pass an order or directions to respondents to grant benefit of Rounding off disability Pension @ 20% to @ 50% for life to the applicant and pay due arrears including consequential benefits with interest @ 12% p.a. till final payment is made in light of Hon’ble Apex Court Judgments and letter dated 31.01.2001.*
- E. To issue / pass any other order or direction as this Hon’ble Tribunal may deem just, fit and*

proper under the circumstances of the case in favour of the applicant

F. To allow this original application with costs.”

2. Counter affidavit filed by the respondents is taken on record.

3. Briefly stated, applicant was enrolled in the Defence Security Corps (DSC) on 31.01.2008 and was discharged on 30.09.2021 (A/N) in Low Medical Category. At the time of discharge from service, the Release Medical Board (RMB) held on 17.05.2021 assessed his disability **Type II Diabetes Mellitus @ 20%** for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 07.01.2022. Being denied by disability pension, the instant Original Application has been filed.

4. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the DSC and there is no note in the service documents that he was suffering from any disease at the time of enrolment in DSC. The disease of the applicant was contacted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be

granted disability pension as well as arrears thereof, as applicant is also entitled to disability pension and its rounding off to 50%.

5. On the other hand, Ld. Counsel for the respondents contended that after retirement from DSC service applicant was granted service pension and other retiral dues. Disability of the applicant assessed @ 20% for life has been regarded as NANA by the RMB as **Diabetes Mellitus, Type II** is a metabolic disorder of idiopathic origin with a strong genetic preponderance. Moreover, this disability was occurred in peace station, hence applicant is not entitled to disability pension. He pleaded for dismissal of the Original Application.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. 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 disability of the applicant is attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

7. 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**, 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)."

8. 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 disability "**Type II Diabetes Mellitus**" is neither attributable to nor aggravated (NANA) by service on the ground that it is a metabolic disorder and has been occurred in peace area, therefore, applicant is not entitled to disability pension. We have noticed that the only reason for declaring the disease as not attributable is that it has originated in peace area and has no close time association with Fd/CI Ops/HAA tenure. However, on further scrutiny, we have observed that this disability was detected in May 2021, after about 12 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring diseases as not attributable is very brief and cryptic in nature and do not adequately explain the denial of attributability. We don't agree with the view that there is no stress and strain of service in military stations located in peace areas. Hence, we are inclined to give benefit of doubt in favour of the applicant. Thus, we are of the considered opinion that disability **Diabetes Mellitus Type II @**

20% is to be considered as aggravated by military service because stress and strain of military service in line with the law settled on this matter by the Hon'ble Apex Court in the case of ***Dharamvir Singh*** (supra).

9. 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 December 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 invalidated 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."

10. In view of the above, the **Original Application No. 1001 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. The disability of the applicant is held as aggravated by DSC Service. The applicant is entitled to get disability element @20% for life which would be rounded off to 50% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @20% for life which would stand rounded off to 50% for life from the next date of his discharge. 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.

11. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 11th April, 2023
RKM/-