

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 1192 of 2023**Monday, this the 29th day of April, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 15696390-M, Ex. Hav. Subash Chandra Yadav of 46 EW Coy, C/o 99 APO, S/o of Shri Jagannath Prasad Yadav, Resident of Village Shajhanpur, Post Office –Faizabad, Tehsil-Sadar, Ayodhya, District, Faizabad (U.P), Pincode -224001.

..... Applicant

Ld. Counsel for the Applicant : **Shri K.K. Singh Bisht**, Advocate.
Shri Ram Niwas Pathak, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi -110011.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi -110011.
3. Officer-in-Charge Records, Signals Records (Jabalpur) PIN-908770, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj, (U.P) -211014.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Yogesh Kesarwani**, Advocate
Central Govt. Standing Counsel

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”

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

- (a) *Issue/pass an order or direction to the respondents to quash/set aside the arbitrary and illegal order passed by respondent No.3 vide letter P/ 15696390M/ REJECTION/DP1/ NER dated 28 Feb 2023 {Annexure No. A-1} rejecting the disability element claim of the applicant.*
- (b) *Issue/pass an order or direction of appropriate nature to the respondents to grant 36.8 % disability element of disability pension which after rounding of will be 50% for life from the next date of discharge i.e. from 01 February 2023 along with arrears.*
- (c) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (d) *Allow this application with costs.*

2. Briefly stated, applicant was enrolled in the Indian Army on 23.12.2004 and discharged on 31.01.2023 (AN) under Rule 13 (3) Item III (iii)(a)(i) of the Army Rules, 1954 in Low Medical Category and unwilling to serve further. At the time of discharge from service, the Release Medical Board (RMB) held at 155 Base Hospital on 20.01.2023 assessed his disabilities (i) **‘PRIMARY HYPERTENSION (I-10)’ @30%**, (ii) **‘SIMPLE OBESITY (E-66)’ @5%** and (iii) **‘DYSLIPIDEMIA (E-78)’ @5%**, **composite disabilities @36.8% for life** and opined the

disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 28.02.2023. The applicant preferred Appeal dated 27.03.2023 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The diseases of the applicant were contracted during the service, hence they are attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of disability pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @ 36.8% for life have been regarded as NANA by the RMB, hence as per Regulation 81(a) of Pension Regulations for the Army, 2008 (Part-I) which provides that "*Service personnel who is invalided out from service on account of a disability, which is attributable to or aggravated by such service, may be granted a disability pension consisting of service element and disability element in accordance with*

the Regulations in this section”, the applicant is not entitled to disability element of disability pension. He pleaded for dismissal of the Original Application.

5. 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 three folds:-

- (a) Whether the disabilities of the applicant are attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled to disability element of disability pension being a case of discharge on unwilling to serve further?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. 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)."

7. 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 first disability '**PRIMARY HYPERTENSION (I-10)**' is neither attributable to nor aggravated (NANA) by service on the ground that "*the applicant has incidentally detected to have Primary Hypertension during routine medical examination on induction to HAA from peace as on 07 May 2013 (as per initial med board)*", therefore, applicant is not entitled to disability element of disability pension for this disability. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability element of disability pension to applicant for the first disability is not convincing and doesn't reflect the complete truth on the matter. Even Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was enrolled in Indian Army on 23.12.2004 and the disability has started after more than eight years of Army service i.e. on 07.05.2013. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra), and the first disability of the applicant should be considered as aggravated by military service.

8. However, with regard to second and third disabilities i.e. '**SIMPLE OBESITY (E-66)**' and '**DYSLIPIDEMIA (E-78)**' we are agree with the opinion of the RMB as NANA as the second disability is a lifestyle

disorder due to intake of more calories than are expended by the body and is not secondary to any other documented disability of the applicant and the third disability is a disorder of lipoprotein metabolism. As such these disabilities are not related to military service.

9. Government of India, Ministry of Defence letter No. 16(5)/2008/D(Pen/Policy) dated 29.09.2009 stipulates that *“In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntarily or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity.”* In view of aforesaid letter, the applicant is entitled for grant of disability element of disability pension even if he has been discharged due to unwilling to serve further.

10. 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 January 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 invalided 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 invalided 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.”

11. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017/D(Pen/Policy) dated

23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

12. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Union of India and Ors vs Ram Avtar & ors (supra)*** as well as Government of India, Ministry of Defence letter No.17(01)/2017/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability pension @30% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge.

13. In view of the above, the **Original Application No. 1192 of 2023** deserves to be partly allowed, hence **partly allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The first disability of the applicant is held as aggravated by Army Service. The applicant is entitled to get disability element @30% 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 @30% 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

14. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 29 February, 2024

Ashok/AKD/-