

**Court No. 1**

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

**ORIGINAL APPLICATION No. 889 of 2023**

Monday, this the 08<sup>th</sup> day of April, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Vide Admiral Atul Kumar Jain, Member (A)”**

JC 698390-Y Ex. Sub. Kush Narayan Jaiswal, S/o Shri Bajrangi Lal Jaiswal, R/o 590-S/1413/01, Sheetal Kheda, Raebareli Road, District – Lucknow (UP)-226025.

**..... Applicant**

Ld. Counsel for the Applicant : **Shri Ravi Kumar Yadav**, Advocate.  
**Shri Saurabh Yadav**, Advocate

Versus

1. The Union of India, Rep. by the Secretary, Govt. of India, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters of MoD (Army), Post – DHQ, New Delhi-110011.
3. O IC Records, The AMC Records, Lucknow Cantt, District Lucknow, UP-226002.
4. PCDA (P), Draupadi Ghat, Allahabad (UP)-211014.

**.....Respondents**

Ld. Counsel for the Respondents. : **Shri Alok Kumar Mishra**, Advocate  
Central Govt. Standing Counsel  
Assisted **Major Uma Yadav**,  
Departmental Representative

**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. *to quash and set aside the Respondent No. 3 letter No. JC 698390-Y/Pen/DP 1<sup>st</sup> Appeal dated 29 May 2023 (Annexure A-1 of instant OA & Impugned Order).*
- B. *to issue/pass an order or directions of appropriate nature to the respondents to grant disability element to the applicant for disability (ii) & (iii) from next date of his retirement from service (01.06.2020) and to pay the arrears along with suitable rate of interest as deem fit by this Hon’ble Tribunal.*
- C. *to grant the benefit of rounding off of the disability pension from 52% to 75% and to pay the arrears along with suitable rate of interest as deem fit by this Hon’ble Tribunal.*
- D. *Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Army Medical Corps of Indian Army on 05.05.1990 and was discharged from service on 31.05.2020 in Low Medical Category on completion of terms of engagement under Rule 13(3) Item I (i) (a) of the Army Rules, 1954 after rendering 30 years and 27 days of service. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Panagarh on 18.02.2020 assessed his

disabilities (i) **'FRACTURE LATERAL END OF CLAVICLE (RT) (OPTD) (S-42.0)'** @20% for life as **attributable to service**, (ii) **'PRIMARY HYPERTENSION (I-10)'** @30% for life as neither attributable to nor aggravated (NANA) by service and (iii) **'IMPAIRED CLOCOSE TOLLRANCE (R-73.02)'** @15% for life as neither attributable to nor aggravated (NANA) by service, **composite disabilities @52% for life**. Accordingly, the applicant was granted disability element of disability pension @20% rounded off to @50% for life from the next date of his discharge. But the applicant's claim for grant of disability element of disability pension for the second and third disabilities was rejected vide letter dated 21.08.2020. The applicant preferred Representation/First Appeal dated 15.05.2023 which too was rejected vide letter dated 29.05.2023. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that the first disease of the applicant has been regarded as attributable to service by the RMB, accordingly, the applicant was granted disability element of disability pension @20% rounded off to 50% for life from the next date of his discharge. He further submitted 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 second and third diseases of the applicant have been regarded as neither attributable to nor

aggravated by service by the RMB. These diseases of the applicant were also contracted during the service, hence they are also 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 element of disability pension and its rounding off to 75% instead of 50%.

4. On the other hand, Ld. Counsel for the respondents contended that the first of the applicant has been regarded as attributable to service, hence, he was granted disability element @20% rounded off to 50% for life from the next date of his discharge. He further contended that second and third disabilities of the applicant have been regarded as NANA by the RMB, hence applicant is not entitled to disability element of disability pension for these disabilities in terms of Regulation 53(a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that *“An individual released/retired/ discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20% or more”*. He further submitted that the Medical Board is an expert body and its opinion

is entitled to be given due weight, value and credence. 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 two folds:-

- (a) Whether the second and third disabilities of the applicant are also attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of pension for these disabilities also?

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 second disability '**PRIMARY HYPERTENSION (I-10)**' is NANA by service on the ground of onset of second disability on 24.02.2016 while posted in Peace location (Lucknow)

and third disability '**IMPAIRED CLOCOSE TOLLRANCE (R-73.02)**' is NANA by service on ground of condition unrelated to service profile, therefore, applicant is not entitled to disability element of disability pension for these disabilities. 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 these disabilities are cryptic, not convincing and doesn't reflect the complete truth on the matter. 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 05.05.1990 and the second and third disabilities have started after more than 25 years of Army service i.e. on 24.02.2016. 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 second and third disabilities of the applicant should also be considered as aggravated by military service.

8. 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 10<sup>th</sup> 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.”*

9. 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.

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 cases of **Union of India and Ors vs Ram Avtar & ors (supra)** and **Shiv Dass vs. Union of India (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 element of disability pension @52% for life

to be rounded off to 75% 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 No. 889 of 2023** deserves to be partly allowed, hence **partly allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension for the second and third disabilities are set aside. Be it mentioned that the applicant's first disability has already been regarded as attributable to service and the applicant is getting disability element @20% rounded off to 50% for life from the next date of his discharge. The second and third disabilities i.e. '**PRIMARY HYPERTENSION (I-10)**' and '**IMPAIRED CLOCOSE TOLLRANCE (R-73.02)**' of the applicant are also held as aggravated by Army Service. The applicant is held entitled to get disability element @52% for life which would be rounded off to 75% for life w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @52% for life which would stand rounded off to 75% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 27.07.2023. The disability element of disability pension paid @50% w.e.f. three years preceding the date of filing of Original Application shall be adjusted from the arrears. 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

13. No order as to costs.

14. Major Uma Yadav, Departmental Representative for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated : 08 April, 2024

AKD/-