

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 387 of 2021

Friday, this the 17th day of December, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. IC-44789L, Col. Kush Kumar Sharma, INT (SPR) (Retd.),
Son of Suresh Chandra Sharma, R/o A-1/113, Rashmi Khand,
Sharda Nagar, Lucknow, Uttar Pradesh-226002.

..... **Applicant**

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

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of Army Staff, Through Additional Directorate General Personnel Services (PS-4), Adjutant General’s Branch, Integrated Headquarters of MoD (Army), South Block, New Delhi-110011.
3. Additional Directorate General of Personnel Services/AG’s Branch/PS-4 (Imp-I), IHQ of Ministry of Defence (Army), Room No. 11, Plot No. 108 (West), Brassey Avenue, Church Road, New Delhi-110001.
4. Additional Directorate General of Manpower (P&P)/MP-6(F), Adjutant General’s Branch, Army Headquarters, West Block-III, R.K. Puram, New Delhi-110066.
5. MP-6(F), MP 5&6, Integrated Headquarters of Ministry of Defence (Army), West Block, R.K. Puram, New Delhi-110066.
6. The PCDA (Pension), Draupadi Ghat, Allahabad (Prayagraj).

.....**Respondents**

Ld. Counsel for the : **Shri Rajesh Shukla**, Advocate
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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 issue/pass an order or directions to set-aside/quash the letter/order no. 13417/IC-44789L/INT/MP-6(F)/879/2017/AG/PS-4 (Imp-II) dated 29 June 2018, letter/order no. 13417/IC-44789L/INT/MP-6(F)/188/2018/1st Appeal/AG/PS-4 (Imp-II) dated 19 March 2019 and letter/order no. B/38046A/496/2019/AG/PS-4(2nd Appeal) dated 11 November 2020 passed by respondent no. 3, which are being attached as Annexure No. 1, 2 and 3 to this Original Application.*
- (b) *To issue/pass an order or directions to the respondents to grant Disability Element of Disability Pension element @60% for life to the applicant with effect from date of superannuation i.3. 30.04.2018 for Ids Primary Open Angle Glaucoma, Hypertension and DM Type – 2 in light of Hon’ble Apex Court judgment.*
- (c) *To issue pass an order or directions to the respondents to grant benefit of Rounding off Disability Pension @60% to @75% for life to the applicant with effect from date of superannuation i.e. 30.04.2018 for Ids Primary Open Angle Glaucoma, Hypertension and DM Type-2 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.*

(d) *Any other relief which the Hon''ble Tribunal may deem fit and proper in the facts and circumstances of the case is also granted along with cost of the OA.*

2. Briefly stated, applicant was commissioned in the Indian Army on 13.06.1987 and was retired on 30.04.2018 (AN) in Low Medical Category on attaining the age of superannuation. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Meerut assessed his disabilities (i) **'CORONARY ARTERY DISEASE (ANT SEPTAL MI) (I-24.0)'** @30% for life as **attributable** to service, (ii) **'PRIMARY OPEN ANGLE GLAUCOMA (BOTH EYE) (H.40.1)'** @6-10% for life, (iii) **'HYPERTENSION (I 10)'** @30% for life and (iv) **'DM TYPE-2'** @20% for life, **composite disabilities @60% for life**, and opined the disabilities Nos. (ii), (iii) and (iv) to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 29.06.2018. The applicant preferred First Appeal which too was rejected vide letter dated 19.03.2019. The applicant also preferred Second Appeal which too was rejected by the respondent no. 3 vide letter dated 11.11.2020 for disabilities Nos. (ii), (iii) and (iv). However, respondent no. 3 had accepted the disability element of disability pension claim of applicant for first disability i.e. **'CORONARY ARTERY DISEASE (ANT SEPTAL MI) (I-24.0)'** @30% for life with effect from 01.05.2018 which was communicated to the applicant vide letter dated 15.12.2020. Accordingly, the applicant was

granted disability element of disability pension @30% for life rounded off to @50% for life. 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 commission, 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 commission in Army. All the diseases of the applicant were contracted during the service, hence second, third and fourth disabilities were also 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 as well as arrears thereof for these disabilities also, as applicant is also entitled to disability element of disability pension and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that the second, third and fourth disabilities of the applicant @6-10%, 30% and 20% for life respectively have been regarded as NANA by the RMB, hence applicant is not entitled to disability element of disability pension for these disabilities. 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 of two folds:-

- (a) Whether the second, third and fourth disabilities of the applicant are attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the 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 second, third and fourth disabilities i.e. **‘PRIMARY OPEN ANGLE GLAUCOMA (BOTH EYE) (H.40.1)’, ‘HYPERTENSION (I 10)** and **‘DM TYPE-2’** are neither attributable to nor aggravated (NANA) by service on the ground of onset of these disabilities in **2011, May, 2014 and September, 2014** while posted

in Peace locations (Pune & Jhansi), 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 pension to applicant is 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 commissioned in Indian Army on 13.06.1987 and the second, third and fourth disabilities have started after more than 24 years of Army service i.e. in the year 2011 and 2014. 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, third and fourth disabilities of the applicant should 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 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 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 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. 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.”

10. 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 @ 60% 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.

11. In view of the above, the **Original Application No. 387 of 2021** deserves to be allowed, hence **allowed**. The impugned orders dated 29.06.2018, 19.03.2019 and 11.11.2020, annexed as Annexure Nos. 1, 2 and 3 with Original Application, rejecting the applicant's claim for grant of disability element of disability pension for the second, third and fourth disabilities, are set aside. Be it mentioned that the first disability has already been accepted by the respondents as attributable to military service. The second, third and fourth disabilities of the applicant are held as aggravated by

military Service. The applicant is entitled to get disability element @60% 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 @60% 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 17.07.2021. The amount of disability element of disability pension already paid to the applicant for the first disability shall be adjusted from the arrears to be paid. 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

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 17 December, 2021

AKD/-