

**E. Court**

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

**ORIGINAL APPLICATION No. 646 of 2021**

Monday, this the 14<sup>th</sup> day of February, 2022

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

No. 15746759L Ex. Rect. Sudhakar Singh S/o Jagjeevan Lal Singh, 28B/1A, Uttari Lokpur, Naini, Prayagraj.

.....Applicant

Ld. Counsel for : **Shri Rohit Kumar**, Advocate.  
the applicant

**Versus**

1. Chief of the Army Staff, DHQPO, New Delhi-110011.
3. Second Appellate Committee on Pensions Additional Director General of Personal Services Adjutant Generals Branch/PS-4 (Imp-II) Integrated Headquarters of MoD (Army) Room No. 11, Plot No. 108 (West) Brassey Avenue, Church Road, New Delhi-110011.
4. Commandant cum Chief Records Officer Signal Records, PO Bag No.5, Jabalpur.
5. Union of India, Through Secretary, Ministry of Defence, New Delhi 110011.

.....Respondents

Ld. Counsel for the: **Ms. Anju Singh**, Advocate  
Respondents. Central Govt Counsel.

**ORDER (Oral)**

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

- (a) *Direct the respondent No.2 to decide the second appeal of the applicant dated 25.01.2021.*
- (b) *Quash the rejection order of the First Appellate Committee on Pensions bearing No.B/40502/1128/2019/AG/PS-4(Imp-II) dated 15Sept 2019.*
- (c) *To direct the respondents to pay disability pension to the applicant together with the benefits of broad –banding as catered for in Government of India, Ministry of Defence letter bearing No. 1(2)/97/I/D (Pen-C) dated 31 Jan 2001.*
- (d) *To direct the respondents conducts re-survey medical board of the applicant to ascertain the percentage of disability suffered by the applicant.*
- (e) *To direct the respondents to also examine whether the applicant suffered from drug induced neuropathy both eyes, if so, what is the percentage of disability.*
- (f) *To summon the documents related to medical treatment of the applicant from 26 Mar 2017 onwards.*
- (g) *To issue any other or direction considered expedient and in the interest of Justice and equity.*
- (h) *Award cost of petition.*
- (i) *To quash the rejection order of the Adjutant General Branch, IHQ of MoD (Army) M Block, Room No. 100, Brassey Avenue, Church Road, New Delhi -01 letter bearing No. B/38046A/31/2021/AG/PS-4(2<sup>nd</sup> Appeal) dated 10 Oct 2021, with all the consequential benefits to the applicant.*

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 17.03.2016 and was invalided out from service on 21.05.2018 (A/N) in low medical category **S1H1A1P5E1** prior to completion of terms of engagements under Rule 13 (3) Item (IV) of Army Rules, 1954. The Invaliding

Medical Board (IMB) held at Military Hospital, Panaji (Goa) on 26.03.2018 his disability '**RENAL TRANSPLANT RECIPIENT**' @90% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. Applicant's claim for grant of disability pension was rejected vide letter dated 26.04.2019. the First Appeal preferred by the applicant was also rejected vide letter dated 15.09.2020 which was communicated to the applicant vide letter dated 21.11.2020. The applicant also preferred Second Appeal which too was rejected vide letter dated 11.10.2021 which was communicated to the applicant vide letter dated 02.11.2021. 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 disease of the applicant was contacted during the service, hence it is attributable to and aggravated by Military Service. Ld. Counsel for the applicant has relied upon the Hon'ble Apex Court judgment in the case of **Sukhwinder Singh vs Union of India & Ors**, reported in (2014) STPL (WEB) 468 SC and contended that since applicant's services were cut short and he was invalided out from service prior to completion of terms of engagement, therefore, applicant deserves to be granted disability pension and its rounding off to 100%.

4. On the other hand, Ld. Counsel for the respondents submitted that as the disability of applicant has been assessed @90% for life as NANA by the IMB, hence, he is not entitled to disability pension in terms of para 53 of Pension Regulations for the Army, 2008 (Part-I) read in conjunction with Regulation 179 of Pension Regulations for the Army, 1961 (Part - I) and his claim was rightly denied by the respondents. He pleaded for dismissal of the Original Application.

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

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Invaliding 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 this point is very clear as reported in (2014) STPL (WEB) 468, **Sukhwinder Singh vs Union of India & Ors.** Para 9 of the aforesaid judgment being relevant is reproduced as under:-

*"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty percent and seems to us to be logically so. Fourthly, whenever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."*

8. In view of above Hon'ble Apex Court's judgment, it is clear that once a person has been recruited in a fit medical category, the benefit of doubt will lean in his favour unless cogent reasons are given by the Medical Board as to why the disease could not be detected at the time of enrolment. In the instant case the IMB has only endorsed that disability is not due to infection (no H/o trauma), hence, NANA. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of IMB for denying disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant, and the disability of the applicant should be considered as aggravated by military service.

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

11. 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(01)/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability pension @90% for life to be rounded off to 100% for life may be extended to the applicant from the next date of his discharge.

12. In view of the above, the **Original Application No. 646 of 2021** deserves to be allowed, hence allowed. The impugned orders, rejecting the applicant's claim for grant of disability pension, are set aside. The disability of the applicant is held as aggravated by Army Service. The applicant is entitled to get disability pension @90% for life which would be rounded off to 100% for life from the next date of his discharge. The respondents are directed to grant disability pension to the applicant @90% for life which would stand rounded off to 100% 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

13. No order as to costs.

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

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

Dated: 14 February'2022

AKD/-