

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 631 of 2023**Thursday, this the 11th day of January, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

IC – 58028L, Col. Sanal Kumar MK (Retd.), Sonj of MB KK Nair,
currently residing at Tower No. CB-II, Flat No. 505, Sector 74,
Supertech Capetown, Noida (UP)-201301.

..... Applicant

Ld. Counsel for the : **Shri Vinay Pandey**, Advocate
Applicant **Shri Shashi Kant Chaturvedi**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), DHQ PO, New Delhi-11.
2. The Chief of the Army Staff, Army Headquarters, Sena Bhawan, New Delhi.
3. Chairman ACFA, Officer Records Office (ORO), ADG MP (P&P), AG’s Branch, IHQ of MOD (Army), West Block-III, R.K. Puram, New Delhi-110066.
4. Principal Controller of Defence Accounts, Draupadi Ghat, Prayagraj (UP)>

.....Respondents

Ld. Counsel for the : **Shri J.N. Mishra**, Advocate
Respondents. Central Govt. Counsel
Assisted by Major Danish Farooqui,
Departmental Representative

ORDER (ORAL)

“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 of appropriate nature to quash the decision taken by Army Authorities as mentioned in letter No. 13301/IC-58028L/MECH INF/MP-6(E)/224/2022/AG/MP dated 18th July 2022 Annexure No. A-1 rejecting the disability pension claim.*
- (b) *Issue/pass an order or direction of appropriate nature directing the respondents to concede the attributability and aggravation of ID due to military service and grant disability pension with the benefit of rounding off.*
- (c) *Issue/pass an order or direction of appropriate nature to the respondents to make the payment arrears along with interest accrued to the applicant due to revision of his pension and continue to pay regulation pension to the applicant in the revised rate.*
- (d) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (e) *Allow this application with costs.*

2. Briefly stated, applicant was commissioned in the Indian Army on 13.06.1998 and retired on 31.05.2022 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, Trivandrum on 11.12.2021 assessed his

disabilities (i) '**DIABETES MELLITUS TYPE-2 (ICD NO. E 11.9)**' @30% for life as **aggravated** by service and (ii) '**NASH (ICD NO. K 75.81)**' @20% for life as neither attributable to nor aggravated (NANA) by service, **composite disabilities @44% for life**. The applicant's claim for grant of disability pension was not approved by the Competent Authority vide letter dated 18.07.2022. The applicant preferred First Appeal which too was rejected vide letter dated 25.07.2023. 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 commissioning, 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. The first disability of the applicant has been regarded as aggravated by service by the RMB. The Competent Authority has no authority to overrule the opinion of the RMB with regard to first disability. He further contended that the second disease of the applicant was also contracted during the service, hence it is 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 50%.

4. On the other hand, Ld. Counsel for the respondents contended that the first disability of the applicant @30% for life has been regarded as aggravated by service and the second disability of the applicant @20% for life has been regarded as NANA by the RMB, but the Competent Authority after examining the case of relevant rules and administrative/medical provisions has decided that the disability ID (i) "TYPE – 2 DIABETES MELLITUS (ICD No. E 11.9)" & ID (ii) "NASH (ICD No. K 75.81)" did not fulfil the eligibility conditions as laid down in existing rules/provisions for the grant of disability element and the claim for the same is 'NOT APPROVED', as such the applicant is not entitled to disability element of disability pension. He further submitted that Para 5 of Entitlement Rules to Casualty Pensionary Awards, 2008 provides that "*The Medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore, it may not detect some dormant disease. Besides certain hereditary constitutional in nature and congenital diseases may manifest later in life, irrespective of service conditions. The mere fact that a disease has manifested during military services does not per se establish attributability to or aggravation by military service*". He further submitted that as per Regulations 26 and 37 of the Pension Regulations for the Army, 2008 (Part-I) the applicant is not entitled for the grant of 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 of three folds:-

- (a) Whether the Competent Authority has authority to overrule the opinion of RMB with regard to first disability?
- (b) Whether the second disability of the applicant is also attributable to or aggravated by Military Service?
- (c) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. This is a case where the first disability of the applicant has been held as aggravated by military service by the RMB. The RMB assessed the first disability @30% for life. However, the opinion of the RMB has been overruled by Competent Authority and the claim for the grant of disability element of disability pension has not been approved.

7. The issue of sanctity of the opinion of a Release Medical Board and its overruling by a higher formation is no more Res Integra. The Hon'ble Supreme Court in the case of **Ex. Sapper Mohinder Singh vs. Union of India & Others**, in Civil Appeal No.164 of 1993, decided on 14.01.1993, has made it clear that

without physical medical examination of a patient, a higher formation cannot overrule the opinion of a Medical Board. Thus, in light of the observations made by the Hon'ble Apex Court in the case of ***Ex Sapper Mohinder Singh vs. Union of India & Others***, we are of the considered opinion that the decision of competent authority with regard to first disability over ruling the opinion of RMB held on 11.12.2021 is void in law. The relevant part of the aforesaid judgment is quoted below:-

“From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core.”

8. Thus in light of the aforesaid judgment (supra) as well as IHQ of MoD (Army) letter dated 25.04.2011 it is clear that the first disability assessed by RMB cannot be overruled by the Competent Authority, hence the decision of Competent Authority is void. Hence, we are of the opinion that the first disability of the applicant

should be considered as aggravated by military service as has been opined by the RMB.

9. With regard to second disability, 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)."

10. 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 '**NASH (ICD NO. K 75.81)**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability on 22.10.2021 while posted in Peace location (Trivandrum), 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 for the second disability 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 13.06.1998 and the second disability has started after more than 23 years of Army service i.e. on 22.10.2021. 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 disability of the applicant should also be considered as aggravated by military service.

11. 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."*

12. 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.

13. 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 element of disability pension @44% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his retirement.

14. In view of the above, the **Original Application No. 631 of 2023** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. Both the disabilities of the applicant are held as aggravated by Army Service. The applicant is entitled to get disability element @44% for life which would be rounded off to 50% for life from the next date of his retirement. The respondents are directed to grant disability element to the applicant @44% for life which would stand rounded off to 50% for life from the next date of his retirement. 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.

15. No order as to costs.

16. Major Danish Farooqui, 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.

(Lt. Gen. Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 11 January, 2024

AKD/-