

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 300 of 2023**Monday, this the 31st day of July, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon’ble Vide Admiral Atul Kumar Jain, Member (A)”**Ved Vijay Pandey, No. 15687970 A, Ex. Hav./Store Keeper
Technical, S/o Shri Udai Narayan Pandey, R/o Village & P.O. –
Sitakund, Tehsil – Ballia, District – Ballia (U.P.)-277001.**..... Applicant**Ld. Counsel for the : **Shri Vijay Kumar Pandey**, Advocate.
Applicant **Shri Girish Tiwari**, Advocate
Shri Dheerendra Kumar Agnihotri, Advocate
Shri Sandeep Tripathi, Advocate
Shri Vishnu Kant Awasthi, Advocate
Versus

1. Union of India, through Secretary, Ministry of Defence,
South Block, R.K. Puram, New Delhi-110011.
2. Dir PS-4, Adjutant General’s Branch, IHQ of MoD (Army),
New Delhi-110011.
3. OIC Records, Records Signals, PIN-908770, C/o 56 APO.
4. PCDA (P), Draupadighat, Allahabad (U.P.)-211014.

.....RespondentsLd. Counsel for the : **Dr. Gyan Singh**, Advocate
Respondents. Central Govt. Counsel**ORDER (ORAL)****“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

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

- (i) *That this Hon'ble Tribunal may kindly be pleased to set aside the impugned rejection order of disability pension, if any, and grant the disability pension @56.68% (40% + 12% +2.28% + 2.4% = 56.68%) for life which is rounded to 75% for life instead of 50% for life to the applicant w.e.f. 01.08.2022, to actual date of payment and also onwards, and provide the interest on the aforesaid delayed amount of disability pension with 18% p.a. since due date to actual date of payment in the interest of justice.*
- (ii) *That this Hon'ble Tribunal may kindly be awarded the cost Rs.30,000/- (Rupees Thirty Thousand Only) to the applicant against opposite parties.*
- (iii) *That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Corps of Signals of Indian Army on 30.07.2003 and discharged from service on 31.07.2022 in Low Medical Category under Rule 13(3) Item III (iii) (a) (i) of the Army Rules, 1954, as not recommended by his Commanding Officer for continued retention in service being unwilling and non-availability of suitable sheltered appointment. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Jodhpur on 04.07.2022 assessed his disabilities (i) '**FRACTURE 2ND, 3RD & 4TH NECK OF METACARPALS (LT) (OPTD) 9S62.4**' @5% as neither attributable to nor aggravated (NANA) by service, (ii) '**BILATERAL SENSORINEURAL HEARING LOSS (H-90.3)**' @40% as

aggravated by service and (iii) '**SIMPLE OBESITY (E66)**' @5% as NANA by service for life and (iv) '**THIRD VENTRICLE COLLOID CYST (OPTD) (Q04.6)**' @20% as NANA, **composite disabilities @56.68% for life**. Accordingly, the applicant was granted disability element of disability pension @40% rounded off to @50% for life. But the applicant's claim for grant of disability element of disability pension for the first, third and fourth disabilities was rejected vide letter dated 03.08.2022. The applicant preferred First Appeal date 25.08.2022 and reminder thereof dated 06.02.2023 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 first, third and fourth 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 second disease of the applicant has been regarded as aggravated by service, hence, he was granted disability element @40% rounded off to 50% for life. He further

contended that first, third and fourth disabilities i.e. **'FRACTURE 2ND, 3RD & 4TH NECK OF METACARPALS (LT) (OPTD) 9S62.4'**, **'SIMPLE OBESITY (E66)'** and **'THIRD VENTRICLE COLLOID CYST (OPTD) (Q04.6)'** of the applicant @5%, 5% and 20% respectively for life 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 first, third and fourth disabilities i.e. . **'FRACTURE 2ND, 3RD & 4TH NECK OF METACARPALS (LT) (OPTD) 9S62.4'**, **'SIMPLE OBESITY (E66)'** and **'THIRD VENTRICLE COLLOID CYST (OPTD) (Q04.6)'** 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 fourth disability i.e. **‘THIRD VENTRICLE COLLOID CYST (OPTD) (Q04.6)’** is neither attributable to nor aggravated (NANA) by service on the ground that benign cyst, not causal relationship to military service, 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 this disability is cryptic, not convincing and doesn't reflect the complete truth on the matter. The applicant was enrolled in Indian Army on 30.07.2003 and the fourth disability has started after more than 18 years of Army service i.e. in March, 2022. 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 fourth disability i.e. **‘THIRD VENTRICLE COLLOID CYST (OPTD) (Q04.6)’** of the applicant should also be considered as aggravated by military service.

8. With regard to first and third disabilities i.e. . ‘**FRACTURE 2ND, 3RD & 4TH NECK OF METACARPALS (LT) (OPTD) 9S62.4**’ and ‘**SIMPLE OBESITY (E66)**’ we are agree with the opinion of the RMB as the first disability was regarded as NANA on the basis of Injury Report dated 03.08.2012 and Court of Inquiry Report dated 24.01.2013 and the third disability is a life style disease, related to levels of physical activity and caloric intake in diet.

9. In para 17 A (a) of Chapter VII of the Guide to Medical Officer (Military Pensions), 2002 the provision for composite assessment has been mentioned which reads as under :-

“17A. Composite Assessment

(a) Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment will be the arithmetical sum of their separate assessment. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping. There is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases. This is not correct.”

10. In the instant case there are functional effects of the second and fourth disabilities overlapping, as such composite assessment is to be reduced in proportion to the degree of overlapping. The degree of second disability is @40% and fourth disability is @20% for which we are of the view that there is overlapping and we hold that composite assessment of second and fourth disabilities is more than @50% for life.

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 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."*

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 more than @50% for life to be rounded off to 75% for life may be extended to the applicant from the next date of his discharge.

14. In view of the above, the **Original Application No. 300 of 2023** to be partly allowed, hence **partly allowed**. The impugned

order, rejecting the applicant's claim for grant of disability element of disability pension for the fourth disability '**THIRD VENTRICLE COLLOID CYST (OPTD) (Q04.6)**' is set aside. Be it mentioned that the applicant's second disability has already been regarded as **aggravated by military service** and the applicant is getting disability element @40% rounded off to 50% for life. The fourth disability i.e. '**THIRD VENTRICLE COLLOID CYST (OPTD) (Q04.6)**' of the applicant is also held as aggravated by Army Service. The applicant is held entitled to get disability element more than @50% for life which would be rounded off to 75% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant more than @50% for life which would stand rounded off to 75% for life from the next date of his discharge. The disability element of disability pension paid @50% from the next date of applicant's discharge 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

15. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 31 July, 2023

AKD/-