

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 881 of 2023**Friday, this the 05th day of July, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

JC-542188K Sub. Trilok Singh (Retd.), S/o late Gopal Singh, R/o
Kandari Enclave, Phase-I, Shyampur (Ambiwala), Post –
Ambiwala, District – Dehradun, Uttarakhand-248007.

..... Applicant

Ld. Counsel for the Applicant : **Shri Raj Kumar Mishra, Advocate**
Ms. Upasna Mishra, Advocate
Shri Kapil Sharma, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block-III, DHQ PO, New Delhi-110011.
3. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Prayagraj, Uttar Pradesh-211014.
4. The Officer-in-Charge, The Kumaon Regiment Records, PIN-900473, C/o 56 APO.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Amit Jaiswal, Advocate**
Central Govt. Standing Counsel

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 issue/pass an order or direction of appropriate nature to the respondents to set aside/quash the Impugned Order of rejection dated 03.09.2022 along with the proceedings of the RMB dated 30.05.2022, copy of rejection of first appeal vide letter No.B40502/189/2023AG/PS-4 (1st Appeal) dated 27.04.2023, copy of letter No. JC542188/DP/NE&PG dated 15.05.20223 SRO The Records Kumaon Regiment.*
- (b) *To issue/pass an order or direction of appropriate nature to the respondents directing to grant disability pension from the date next to the date of discharge i.e. 01.11.2022 and interest thereon at the rate of 18% per annum.*
- (c) *Issue/pass an order or direction to the respondents to round off the disability pension from 40% for life to 50% for life in terms of benefit of broad-banding as held in Ram Avtar’s case.*
- (d) *Issue/pass any other order or direction which this Hon’ble Trib unal may deem just and proper in the nature and circumstances of the case including cost of the litigation.*
- (e) *Allow this application with exemplary costs.*

2. Briefly stated, applicant was enrolled in the Indian Army on 17.10.194 and discharged on 31.10.2022 in Low Medical Category

on fulfilling the conditions of his enrolment under Rule 13 (3) Item I (i) (a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at 7 Air Force Hospital, Kanpur on 30.05.2022 assessed his disability '**LEFT CONDUCTIVE HEARING LOSS (H90.2)**' @40% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 03.09.2022. The applicant preferred First Appeal dated 21.11.2022 which too was rejected vide letter dated 27.04.2023 which was communicated to the applicant vide letter dated 15.05.2023. 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 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 contracted during the service, hence it is 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 pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @40% for life has been

regarded as NANA by the RMB, hence as per Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I) and 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”* the applicant is not entitled to disability element of disability pension. He further submitted that the applicant placed in low medical category in H2 (T-24) for the aforesaid disability vide AFMSF-15 dated 27.10.2018. Thereafter, the applicant placed in medical category H2 (P) w.e.f. 13.04.2019 vide AFMSF-15 (Ver-2006). He further submitted that at the time of enrolment, normal medical check-up was done by a single Medical Officer, hence, such internal disease cannot be detected at the time of enrolment. As per the detailed justification in Part VI of AFMS-16 Onset of the disability in October 2018 Dehradun. There is history of working close proximity of gun fire, grenade, and bomb blast of loud noise. Ototoxic drug usage and trauma/serious injury involving fractures of major bones and not partly due to additional aural condition

related to service. 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 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 element of 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 disability '**LEFT CONDUCTIVE HEARING LOSS (H90.2)**' is neither attributable to nor aggravated (NANA) by

service on the ground of onset of disability in October, 2018 at Dehradun and there is no history of working in close proximity of gun fire, grenade, bomb blast and in constant expose of blast of loud noise, ototoxic drug usage and trauma/serious injury involving fracture of major bones and not partly due to an additional aural conditions related to military service, therefore, applicant is not entitled to disability element of disability pension. 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 is cryptic, not convincing and doesn't reflect the complete truth on the matter. The applicant was enrolled in Indian Army on 17.10.1994 and the disability has started after more than 23 years of Army service i.e. in October, 2018. 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 disability 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 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. 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/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @40% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge.

11. In view of the above, the **Original Application No. 881 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. The disability of the applicant is held as aggravated by Army Service. The applicant is entitled to get disability element @40% for life which would be rounded off to 50% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @40% for

life which would stand rounded off to 50% 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.

12. No order as to costs.

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

(Justice Anil Kumar)
Member (J)

Dated : 05 July, 2024

AKD/-