

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 559 of 2023

Thursday, this the 02nd day of May, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

No. 217278 R, Deepak Kumar, Ex. POEL (R), S/o Sri Kripal Singh, Resident of 4/278, Vishwakarma Industries, Ram Nagar, Derapur Road, Rura, Kanpur (Dehat), U.P.-209303.

..... Applicant

Ld. Counsel for the Applicant : **Shri Manish Kumar Rai**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Naval Staff, Ministry of Defence (Navy), Integrated Headquarters, Sena Bhawan, New Delhi-110011.
3. Logistic Officer In-charge, Naval Pension Office (NAVPEN), INS Tana Ji, Sion-Trombay, Mankhurd, Mumbai-400088.
4. Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad, Uttar Pradesh-211014.

.....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 Quash or set aside the PEN/600/D/LRDOI:08/2022/217278 R dated 28.06.2022 passed by respondent No. 3, by which the claim for grant of disability pension in respect of applicant has been rejected, contained as Annexure I to this Original Application.*
- (b) *To issue/pass an order or directions to opposite parties to grant composite disability element of pension to the applicant @36% by considering the disability percentage for disease ACL TEAR RIGHT KNEE (ICD NO. S 83.2) @20% for life keeping in view of Para 34 (a) of Chapter VII of GMO 2008 and by holding disability Seizure Disorder (ICD No. G 40) aggravated by Military Service which has been assessed @20% by RMB, from the next date of his discharge i.e. from 01.09.2022 and further round it off to 50% by giving the benefit of Govt. of India, Ministry of Defence Letter dated 31.01.2001.*
- (c) *To issue/pass an order or directions to opposite parties to pay arrear of disability element of pension along with 12% interest from the next date of his discharge i.e. from 01.09.2022 till it is actually paid.*

(d) *Any other relief which the Tribunal may deem fit and proper in the fact and circumstances of the case in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Navy on 02.08.2007 and was discharged on 31.08.2022 in Low Medical Category after completion of 15 years and 01 month of qualifying service. At the time of discharge from service, the Release Medical Board (RMB) held at Goa, INS Hansa (MI Room) assessed his disabilities (i) '**ACL TEAR RIGHT KNEE ICD NO. S83.2**' @10% as **attributable to service** and (ii) '**SEIZURE DISORDER ICD NO : G40**' @20% as neither attributable to nor aggravated (NANA) by service, **composite disabilities @28% for life**. The applicant's claim for grant of disability pension was rejected vide letter dated 28.06.2022. The applicant preferred First Appeal dated 02.09.2022 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 although the first disability has been opined as **attributable to service** but its degree of disability has been assessed @10% due to unwilling for surgery which cannot be assessed less than 20% as per Para 34(a) of Chapter VII of Guide to Medical Officers (Military Pensoins), 2008. He further submitted that at the time of enrolment, the applicant was found mentally and physically fit for service in the Navy and there is no note in the service documents that he was suffering from any disease at the time of enrolment in

Navy. Both the diseases of the applicant were contracted during the service, hence the second disability of the applicant is also attributable to and aggravated by Naval 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 although the first disability has been regarded as attributable to service by the RMB but its degree of disablement is @10% for life which is less than 20% and the second disability of the applicant @20% for life has been regarded as NANA by the RMB, hence applicant is not entitled to disability pension in terms of Regulation 105-B of the Navy (Pension) Regulations, 1964. 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 three folds:-

- (a) Whether the degree of first disability has been reduced by the RMB due to unwilling for surgery?
- (b) Whether the second disability of the applicant is also attributable to or aggravated by Naval Service?

(c) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. On perusal of record we find that although the RMB has mentioned that the applicant has given his unwilling for surgery for the first disability due to domestic reason. However, the RMB has taken no cognisance and has maintained first disability at 10% throughout. As such we do not find any reason to interfere with the degree of first disability given by the RMB. Further, with the regard to Para 34 (a) of Chapter VII of Guide to Medical Officers (Military Pensions), 2008 we are of the opinion that it is a Guide to Medical Officers and Release Medical Board is a duly constituted body and findings of the board should be given due credence unless it is proved otherwise.

7. 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)."

8. 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 '**SEIZURE DISORDER ICD NO**

: **G40'** is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in June, 2019 while posted in Peace location (Mathura), 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 is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous Naval training and associated stress and strain of Naval service. Although the applicant's second disability is a mental disorder but considering that the applicant was enrolled in Indian Navy on 02.08.2007 and the second disability has started after more than 11 years of Navy service i.e. in June, 2019, we are of the 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 be considered as aggravated by Naval 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/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/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability pension @28% for life to be rounded off to 50% 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. 559 of 2023** deserves to be partly allowed, hence **partly allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. Be it mentioned that the applicant's first disability has been opined as attributable to military service by the RMB. The second disability of the applicant is also held as aggravated by Naval Service. The applicant is entitled to get disability element @28% 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 @28% 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

13. No order as to costs.

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

**(Justice Anil Kumar)
Member (J)**

Dated : 02 May, 2024

AKD/-