

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 327 of 2022**

Wednesday, this the 14<sup>th</sup> day of September, 2022

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

No. 4051975W Ex. Nk. (TS) Ashok Kumar Badola, Village & PO  
: Thangar, Tehsil : Lansdowne, District Pauri Garhwal (UK).

.... **Applicant**

Ld. Counsel for the : **Shri Amit Asthana**, Advocate and  
Applicant

Versus

1. The Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ of MOD (Army), South Block, New Delhi.
3. Adjutant General's Branch, IHQ of MoD (Army), Room No. 11, Plot No. 108 (West), Brassey Avenue, Church Road, New Delhi-110001.
4. Officer-in-Charge Records, Records of Garhwal Rifles, Lansdowne, Pauri Garhwal, PIN-246155.
5. PCDA (Pension), Draupadi Ghat, Allahabad.

... **Respondents**

Ld. Counsel for the: **Shri Adesh Kumar Gupta**, Advocate  
Respondents. Central Govt. Counsel.

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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

- (a) *To issue/pass an order or directions to the respondents to Call for the records including the RMB proceedings as well as the findings and opinion as approved by the competent authority based on which the respondents in most illegal manner rejected the claim of the applicant in respect of disability of Meniere’s Disease (Hearing Loss) and has also rejected the Appeal filed against denial of disability pension vide their order dated 24.02.1998, 29.04.2005, received in Feb 2018 and thereafter quash all such orders.*
- (b) *Direct the respondents to process the claim fo the applicant in respect of disability of Obstructive Sleep Apnea w.e.f. 01.12.2015 along with the arrears with an interest @18% as expeditiously as possible and decide the representation on dated 22.02.2022.*
- (c) *Further, direct the respondents to extend the benefit broad banding in respect of applicant’s disability of assessed at 15-19% to make it 20% and further round it off to 50% along with the arrears of the disability pension with interest @12% pa to be compounded quarterly with exemplary cost from the date of retirement till date of payment.*
- (d) *Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Garhwal Rifles of Indian Army on 19.05.1980 and was discharged on 31.05.1997 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Secunderabad on 18.12.1996 assessed his disability '**MENIERE'S DISEASE - 385**' @15-19% for two years opined the disability to be neither attributable to nor aggravated by service. The applicant's claim for grant of disability pension was rejected vide letter dated 02.02.1998 which was communicated to the applicant vide letter dated 24.02.1998. The applicant preferred an application dated 20.12.2004 which too was rejected vide letter dated 29.04.2005. The applicant served legal notice dated 22.02.2022 which was replied by the respondents vide letter dated 09.03.2022. 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 further submitted that the disease with which applicant suffers is a hearing loss and per table at para 20 of Amendment to Chapter VII Assessment of Guide to Medical

Officers-2008 (Military Pensions) the degree of disablement in case of hearing loss cannot be assessed less than 20%. 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, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that since the assessment of the disability element is 15-19% i.e. below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 173 of Pension Regulations for the Army, 1961 (Part-I). He further submits that the disability of the applicant is not hearing loss. Therefore, the competent authority has rightly denied the benefit of disability element of pension to applicant. He pleaded for dismissal of 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 assessment of 15-19% of disability is in accordance with extant rules/guidelines?
- (b) Whether the disability of the applicant is 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. On careful scrutiny of the documents, we find that the disability of the applicant has been assessed as 15-19% for two years as neither attributable to nor aggravated by military service. In this regard we would like to make a reference to para 23 of the Guide to Medical Officers - 2002 (Military Pensions) wherein 'Meniere's disease has been mentioned as common cause for sensory neural deafness. Further, we would also like to make reference to table at para 20 of Amendment to Chapter VII Assessment of Guide to Medical Officers-2008 (Military Pensions) which makes it clear that degree of disablement in case of hearing loss cannot be less than 20%. Therefore, we are of the view that applicant's disability should be assessed @20% in accordance with rules/guidelines on the subject, issued by the Ministry of Defence.

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 respondents have denied attributability to the applicant on the ground that the disability “**MENIERE’S DISEASE - 385**’ is neither attributable to nor aggravated (NANA) by service as it is a degenerative illness and has no relation to military service and is less than 20% (15-19%) for two years, 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 the respondents for denying disability pension to applicant is cryptic, 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 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.

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 10<sup>th</sup> 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.”*

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 element of disability pension @20% for two years to be rounded off to 50% for two years may be extended to the applicant from the next date of his retirement.

12. Since the applicant's RMB was valid for two years w.e.f. 31.05.1997, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability element of disability pension.

13. In view of the above, the **Original Application No. 327 of 2022** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant claim for the grant of disability element of disability pension, are set aside. The disability of the applicant is held as aggravated by Military Service. The applicant is entitled to get disability element @20% for two years which would be rounded off to 50% for two years from the next date of

his discharge. The respondents are directed to grant disability element to the applicant @20% for two years which would stand rounded off to 50% for two years from the next date of his retirement. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element of disability pension. 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

14. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: 14 September, 2022

AKD/-