

E-Court**ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI****ORIGINAL APPLICATION No. 113 of 2018**Monday, this the 17th day of October, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**Col. Mukesh Trehan (Retd), Flat No. B2/102, Florida Estate, ‘B’
CHS Ltd., Survey No. 41, Keshavnagar, Mundhwa, Pune-411036,
Maharashtra.**..... Applicant**Ld. Counsel for the : **Mr. Ravindran Ramesh**, Advocate.
Applicant

Versus

The Union of India, MoD (Represented by Defence
Secretary), Through the Office of ADG, MP-5(B), AG’s Branch,
IHQ of MoD (Army), Wing No.3, Ground Floor, West Block-III,
R.K. Puram, New Delhi-110066.**.....Respondents**Ld. Counsel for the : **Mr. B.K. Ashok**, Advocate
Respondents. Central Govt. Counsel**ORDER****“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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 grant the disability element of pension 30% from 16 Apr 2007 for life and for broad banding the same to 50% wef. 16 Apr 2017.*
- (b) *To grant 12% interest on arrears of disability pension wef 16 Apr 2007, till it is paid.*
- (c) *To award the cost of this litigation to Applicant as the Respondent could have granted the disability pension based on Hon'ble SC judgement and Govt. policy on the subject.*
- (d) *Not to grant any leave of appeal to Respondent as the matter does not involve any public interest.*
- (e) *Any other orders as deemed fit in the interest of Applicant/ organization at large.*

2. Briefly stated, applicant was commissioned in the Corps of Signals of Indian Army on 13.12.1980 and premature retired on 15.04.2007 (AN). At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Ahmedabad on 02.03.2007 assessed his disabilities (i) **'PRIMARY HYPERTENSION'** @ 20% for life (ii) **'OBESITY'** @ (Nil) for life and (iii) **'TYPE 2 DIABETES MELLITUS'** @15-19% for life **Composite disabilities 30% life** and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's initial claim for grant of disability pension not processed as the applicant had prematurely retired. The applicant preferred petition dated 19.11.2018 which was rejected vide letter dated

03.01.2019. 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 commissioned, 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 diseases at the time of commissioned in Army. The diseases of the applicant were contracted during the service, hence they 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 composite disabilities of the applicant @ 30% for life have been regarded as NANA by the RMB and as per Government of India, Ministry of Defence letter dated 29.09.2009, the disability element of disability pension is entitled to those officer who become non effective on or after 01.01.2006 on account of pre-mature retirement. Further, as per policy in vogue i.e. Government of India, Ministry of Defence letter dated 19.05.2017, the disability element of disability pension has also been granted to pre- 2006 retirees with effect from 01.01.2006 and as per Government of India, Ministry of Defence letter dated 05.09.2017

benefit of broad banding with effect from 01.01.2016. Therefore, as per Regulation 48 of Pension Regulations for the Army, 1961 (Part – I), the applicant is not entitled to 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 disability of the applicant is attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled to disability element of disability pension being a case of pre-maturely retired on his own request?
- (c) 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 first and third disabilities '**PRIMARY HYPERTENSION**' and '**TYPE 2 DIABETES MELLITUS**' are neither attributable to nor aggravated (NANA) by service on the ground that first disability is due to obesity and third disability is due to metabolic disorder, 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 pension to applicant is not convincing and doesn't reflect the complete truth on the matter. The applicant was commissioned in Indian Army on 13.12.1980 and the first and third disabilities have started after more than 18 and 24 years of Army service respectively i.e. in July, 1999 and July, 2005. 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 first and third disabilities of the applicant should be

considered as aggravated by military service. However, with regard to second disability we are agree with the opinion as NANA as it is a life style disease.

8. Government of India, Ministry of Defence letter No. 16(5)/2008/D(Pen/Policy) dated 29.09.2009 stipulates that *“In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntarily or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity.”* In the submission of Ld. Counsel for the respondents that the aforesaid Policy is applicable with effect from 01.01.2006, whereas the applicant has been discharged from service on 13.10.2003, therefore, this policy is not applicable in the applicant’s case, has no weight as it is against Article 14 of the Constitution of India as on the one hand it is applicable with effect from 01.01.2006 and other hand it is not applicable on the armed forces personnel retired prior to 01.01.2006. In view of the above, the applicant is entitled for grant of disability element of disability pension even if

he has been discharged on his own request on compassionate grounds.

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 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. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

12. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Shiv Dass (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 @ 30% for life due first and third disabilities to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

13. In view of the above, the **Original Application No. 113 of 2018** deserves to be partly allowed, hence **partly allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension for first and third disabilities, is set aside. The first and third disabilities of the applicant are held as aggravated by Army Service. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing of Original

Application for the first and third disabilities. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 16.11.2018. 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.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 17 October, 2022

AKD/-