

COURT NO.3  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA 1753/2019

Ex. Hav Surinder Singh

.....

Applicant

Versus

Union of India and Ors.

.....

Respondents

For Applicant

:

Mr. Praveen Kumar, Advocate,

For Respondents

:

Mr. Satya Ranjan Swain, Advocate

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)

HON'BLE RASIKA CHAUBE, MEMBER (A)

ORDER

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed the OA and the reliefs claimed in Para 8 are read as under respectively:

*"(a) Quash and set aside the letter dated 26 May 2000.*

*(b) Direct Respondents to grant Disability Pension @ 30% as recommended by RMB for life to the applicant with effect from 01 Feb 1998 (i.e., the date of discharge from service). The applicant requests this pension be rounded off to 50% according to the policy letter issued by the Govt of India dated 31.01.2001. This request is further supported by the judgment dated 10.12.2014 passed by the Hon'ble Supreme Court of India in the matter titled Union of India & others Vs Ram Avtar in Civil Appeal*

*418/2012. The applicant seeks interest at 12% p.a. until final payment is made.*

*(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.*

### **BRIEF FACTS**

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Army on 14.06.1974 and served in various units during his tenure. He was discharged from service on 31.01.1998 under Rule 13 (III) (v) of the Army Rules, 1954 in low medical category BEE (P) due to "*Drug Induced Thrombocyte Penia (Recovered) 287 & NIDDM 250*,"

3. A RMB was held on 05.09.1997 at Military Hospital, Bareilly, which assessed his disability as **neither attributable to nor aggravated by military service**. The disability was assessed at **30% for two years**, as approved by the duly constituted Medical Board of Officers.

4. His claim for disability element was rejected by the medical representative at PCDA (P), Allahabad, vide letter dated 02.09.1998, on the ground that the disability was constitutional in nature and not connected with military service. However, the disability was made **attributable to military service but assessed at less than 20% (i.e., 15-19%) for five years from 01.02.1998 to 04.09.2002**. The rejection was communicated to the applicant with advice to prefer an appeal to the Appellate Committee within six months, if so desired.

5. The applicant was granted **service pension** with effect from 01.02.1998. His first appeal dated 30.12.1998 against the rejection of his disability element was also rejected holding that he was not entitled to disability element of pension. Subsequently, BEG Records, Roorkee, vide letter dated 09.05.2002, forwarded his medical documents to Military Hospital, Roorkee for holding a **Re-Survey Medical Board (RSMB)** due on 05.09.2002 under intimation to the applicant and with advice to report to the hospital. However, the applicant failed to report for the RSMB and no assessment could not be carried out. Thereafter, the applicant submitted an application dated 12.08.2019 under the **Right to Information Act, 2005** seeking a copy of his RMB (AFMSF-16). Following this, he filed the present Original Application.

### **SUBMISSIONS ON BEHALF OF APPLICANT**

6. Learned counsel for the applicant submits that the action of the respondents in denying disability pension to the applicant at the rounded-off rate as per the decision in *Ram Avtar* (supra) and the Government of India policy letter dated 31.01.2001 is illegal and unconstitutional. He contends that the applicant was medically fit at the time of enrolment in the Army. However, while serving with 971 ER Rly TA Regiment and during a period of leave due to fever and bleeding from the oral cavity, the applicant was admitted in an emergency to 11 AFH, Hindon (Ghaziabad), where he was diagnosed as a case of Drug-Induced Thrombocytopenia and NIDDM (onset on 11.11.1995 at Ghaziabad). His disability was assessed at 30% for two years. The applicant was discharged from service on 30.01.1998 in low medical category BEE (P) about five months prior to his normal date of retirement. He continues to remain under medication and his condition has progressively deteriorated.

7. The learned counsel argues that since the disabilities arose during active service, they ought to have been considered as attributable to or aggravated by service. In support of his submissions, he relies upon the decision of the Hon'ble Supreme Court in *Union of India and others v. Rajbir and others* (2001) 7 SCC 113. He further contends that since the disability was assessed at 30% by the RMB, it should be rounded off to 50% in light of the judgment of the Hon'ble Supreme Court in *Union of India and others v. Ram Avtar* (Civil Appeal No. 418 of 2012 decided on 10.12.2014). The learned counsel has also placed reliance on *Dharamvir Singh v. Union of India and others* (2013) 7 SCC 316 and on the decision of this Tribunal in *Ex AC (U/T) Naresh Kumar Rana v. Union of India and others* (OA No. 90 of 2014 decided on 25.09.2014).

### **SUBMISSIONS ON BEHALF OF RESPONDENTS**

8. On the other hand, the respondents have filed a detailed counter affidavit, wherein they have justified their action by stating that at the time of applicant's discharge, a RMB was held on 05.09.1997 for the disabilities

*“Drug Induced Thrombocyte Penia (Recovered) 287 and NIDDM 250”* and the RMB assessed his disabilities @ 30% for two years and found that the disabilities were neither attributable to nor aggravated by military service. His claim for disability element was rejected by PCDA (P), Allahabad based on the opinion of the Medical representative stationed at PCDA (P) Allahabad stating that the disability of the applicant was attributable to military service but was less than 20% i.e. 15-19% for five years from 01.02.1998 to 04.09.2002; and accordingly the same was communicated to the applicant. The first appeal submitted by the applicant was rejected by the Government stating that on perusal of service/medical documents, the appellate authority had assessed his disabilities at less than 20% i.e. 15-19% for five years for *“Drug Induced Thrombocyte Penia (Recovered) 287 and NIDDM 250”* being considered unconnected with service. Since the disabilities of the applicant were assessed at less than 20% whereas the minimum is 20% for entitlement to disability element, it was stated that the applicant is not entitled for disability element of pension. Since the disability was assessed for 5 years hence after 5 years the medical documents of the applicant were forwarded to Military Hospital, Roorkee for RSMB as due on 09.05.2002 vide BEG Records, Roorkee letter dated 09.05.2002 under intimation to the applicant with a request to report to Military Hospital, Roorkee. However, the applicant did not report for RSMB, hence disability element was not given after lapse of 5 years. Thereafter on 12.08.2019, the applicant submitted an application under RTI seeking a copy of the RMB (AFMSF-16), which was suitably replied.

### **ANALYSIS**

9. Having heard the learned counsel for the parties and verified the records available on record, the following questions arise for our consideration:

- (i) Whether the applicant, having failed to report for the RSMB scheduled on 05.09.2002 is entitled to any relief in the form of disability element rounding-off benefit for Drug Induced Thrombocyte Penia (Recovered) 287 and NIDDM 250 which he was suffering from.

10. It is a settled proposition of law that the onus to establish that a disability is attributable to or aggravated by military service lies upon the applicant. The primary and most reliable evidence in this regard is the opinion of the duly constituted Medical Board, which is required to be given due weight and ordinarily accepted unless shown to be perverse, unsupported by the record, or contrary to established medical principles. In the present case, the RMB held on 05.09.1997 at Military Hospital, Bareilly recorded the applicant's disabilities as "Drug Induced Thrombocyte Penia (Recovered) 287" and "NIDDM 250", assessed the degree of disability at 30% for two years and categorically opined that both disabilities were neither attributable to nor aggravated by military service (NANA). The PCDA (P), Allahabad based on the opinion of the medical representatives based with them held that the disabilities were attributable to service but were 15-19% for 5 years i.e. upto 04/09/2002.

11. BEG Records, Roorkee, by letter dated 09.05.2002, forwarded the applicant's medical documents to Military Hospital, Roorkee and advised the applicant to report for the RSMB due on 05.09.2002. The communication expressly warned that failure to appear would result in closure of the file and termination of any provisional consideration for disability pension. The applicant did not report for the RSMB and no explanation for non-appearance is on record. This failure to cooperate with a scheduled, statutory medical process disentitles the applicant from raising fresh claims based on the same medical history more than two decades later. The authorities were justified in treating the file as closed in accordance with the procedure communicated to the applicant.

12. The applicant's significant delay in pursuing the present remedy, the relevant events and communications being in 1997-2002 and the RTI/renewed action only being initiated in 2019, militates against upsetting the contemporaneous medical and administrative conclusions. The applicant had statutory remedies available earlier (including the RSMB and appellate route) and his prolonged inaction, coupled with failure to appear for the RSMB, constitute sufficient cause to decline extraordinary relief at this late

stage, especially when there is no fresh, cogent medical material before this Tribunal to displace the RMB's findings. From the record before us there is no new medical evidence produced which would demonstrate that the RMB's conclusion that the disabilities were NANA was incorrect or which would show a material progression causally linked to service that was not available to the RMB even if we were to discard the opinion of the medical specialist in the office of PCDA (Allahabad) and uphold the opinion of the RMB held on 5/9/1997 in the light of ***Mohinder Singh Vs. Union of India***, in ***Civil Appeal No.164 of 1993*** still the disability was assessed as 30% but only for 2 years. In both the scenarios, in the absence of the applicant presenting himself before the duly constituted RSMB which would have renewed the opinion of the previous RMB date 5/9/1997 opinion of the office of PCDA (Allahabad), the last medical opinion will hold good. Mere deterioration in health many years later, without medical proof of service-connection at the relevant time, cannot overturn the contemporaneous Medical Board's opinion.

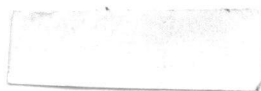
13. The contention that the disability percentage assessed by RMB should be "rounded off" under *Ram Avtar* (supra) is premised upon an initial finding that the disability is attributable to or aggravated by service and that the percentage assessed falls below a rounded threshold. In the instant case the RMB expressly recorded the disabilities as NANA. Where the foundational finding is that the disability is not connected with service, the rounding-off doctrine is inapplicable as there is no service-connection on which to apply the rounding principle. In short, rounding under *Ram Avtar* (supra) cannot be invoked where the disability has been held to be NANA and no disability element has been granted. The applicant has relied upon certain judgments concerning rounding-off and entitlement to disability pension. Those precedents are distinguishable on facts. They apply where a disability has been found attributable to or aggravated by service (or where material before the authority demonstrates service connection) and the assessed percentage falls within ranges where rounding-off is permissible. In the present case the fundamental factual premise - service connection is absent on the basis of the

RMB and related administrative findings. Consequently, the precedents invoked do not furnish a basis to grant relief to the applicant.

14. In view of the foregoing and having regard to the contemporaneous record, in particular the RMB's finding that the disabilities were neither attributable to nor aggravated by service (NANA), the communications of PCDA and the appellate authority, the applicant's failure to present for the RSMB as directed and the absence of any fresh cogent medical material to displace those findings, we find no merit in the OA. The OA is accordingly dismissed. Consequently, the connected MA 536/2017 also stands disposed of.

15. There will be no order as to costs

.Pronounced in the open court on this 24<sup>th</sup> day of December, 2025.



**(JUSTICE NANDITA DUBEY)**

**MEMBER (J)**



**(RASIKA CHAUBE)**

**MEMBER (A)**

*aft/yb*



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HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)  
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER  
24.12.2025

Judgment in this matter has been pronounced today vide a separate signed order. At the time of hearing, certain original documents were kept by us for perusal. Since the judgment in the matter has now been pronounced, these documents be returned to the respondents after taking due acknowledgement.

  
(JUSTICE NANDITA DUBEY)  
MEMBER (J)

  
(RASIKA CHAUBE)  
MEMBER (A)

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