

Form No. 4
{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

(Suppl. 1). O.A. No. 145 of 2021

Lt. Cdr. Digvijay D. Jadhav (Retd.)
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others

By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>25.08.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Heard Mr. Yogendra Pratap Singh, Ld. Counsel for the applicant and Mr. Ashif Shaikh, Advocate instructed by Mr. A.J. Mishra, Ld. Counsel for the respondents.</p> <p style="text-align: center;">Original Application is allowed.</p> <p style="text-align: center;">For orders, see our order passed on separate sheets.</p> <p style="text-align: center;">Misc. Application(s), pending if any, shall be treated to have been disposed of.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%; text-align: center;"> <p>(Vice Admiral Abhay Raghunath Karve) Member (A)</p> </div> <div style="width: 45%; text-align: center;"> <p>(Justice Umesh Chandra Srivastava) Member (J)</p> </div> </div> <p>AKD/AMK/-</p>

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

ORIGINAL APPLICATION No. 145 of 2021

Thursday, this the 25th day of August, 2022

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

Lieutenant Commander Digvijay D. Jadhav (Retd.), No. 06107-B, Son of Shri D. Jadhav, Occ. : Service, resident of “Mauli”, 422/B, Shaniwar Peth, Behind Dr. Kolekar Hospital, Karad, District – Satara, Maharashtra-415110.

..... Applicant

Ld. Counsel for the : **Mr. Yogendra Pratap Singh**, Advocate.
Applicant

Versus

1. Union of India, Ministry of Defence, (through Defence Secretary), 101-A, South Block, New Delhi-110011.
2. The Chief of the Naval Staff (Principal Director of Pay & Allowances), IHQ of MoD (Navy), Room No. 108, NHQ Annexe, Talkatora Stadium, New Delhi-110004.
3. The Logistics Officer-in-Charge, Naval Pension Office, C/o INS Tanaji, Sion-Trombay Road, Mankhurd, Mumbai-400088.
4. The Controller of Defence Accounts (Navy), Pension Cell/IRLA Section, 1 Cooperage Road, Mumbai-400039.

.....Respondents

Ld. Counsel for the
Respondents.

: **Mr. Ashif Shaikh**, Advocate
Instructed by
Mr. A.J. Mishra, Advocate
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 :-

- 8.1 *Quash and set aside the impugned opinion of the Release Medical Board dated 12.04.2017 to the extent it held the first, second and third disabilities as NANA due to its onset in peace station.*
- 8.2 *Quash and set aside the impugned decision of the IHQ MoD (Navy) letter No. PN/7516/DP/17 dated 03.12.2019 and dated 11.01.2021 refusing to grant disability pension to the applicant.*
- 8.3 *Grant disability pension to the applicant for all the disabilities @57.4% along with the benefit of broad-banding to 75% for life with effect from 07.08.2017.*
- 8.4 *Pass such and further orders as deemed necessary to give aforesaid reliefs to the applicant.*

2. Briefly stated, applicant was commissioned in the Indian Navy on 06.08.2007 and retired on 06.08.2017 in Low Medical Category. At the time of retirement from service, the Release Medical Board (RMB) held at Visakhapatnam INHS Kalyani on 12.04.2017 assessed his disabilities (i) **‘PRIMARY HYPERTENSION (IC NO. I 10.0)’ @30%**, (ii) **‘DYSLIPIDIMIA (ICD NO. E 78)’ @1-5%**, (iii) **‘SOLITARY SEIZURE (ICD NO. G 40)’ @20%** and (iv) **‘ANKLE SPRAIN (ICD NO. S 86.9)’ @20%**,

composite disabilities @60%. The RMB has opined the first, second and third disabilities to be neither attributable to nor aggravated (NANA) by service and the fourth disability i.e. '**ANKLE SPRAIN (LT) (ICD NO. S 86.9)**' as **attributable to service.** However, post examination, the competent authority i.e. Principal Integrated Financial Advisor (Navy) (PIFA) has turned down the case stating that there is no causal connection between IDs and Naval service. The applicant's claim for grant of disability pension was rejected vide letter dated 03.12.2019. The applicant preferred First Appeal which too was rejected vide letter dated 11.01.2021. The applicant also preferred Second Appeal dated 28.01.2021 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 at the time of commission, 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 commissioning in Navy. The diseases of the applicant were contracted during the service, hence they are attributable to and aggravated by Naval Service. He further submitted that the fourth disability of the applicant has been regarded as attributable to service and PIFA has no authority to overrule the same. He pleaded that various Benches of Armed Forces Tribunal have

granted disability pension in similar cases, as such the applicant be granted disability pension @60% and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that first, second and third disabilities of the applicant have been regarded as NANA by the RMB and fourth disability although regarded as attributable by the RMB but the PIFA has rejected the claim on the ground that there is no causal connection between this disability and military service, hence as per Regulation 28 of Navy (Pension) Regulations, 1964 the applicant is not entitled to 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 four folds:-

- (a) Whether the first, second and third disabilities of the applicant are attributable to or aggravated by Naval Service?
- (b) Whether the PIFA has authority to overrule the opinion of RMB?
- (c) Whether the applicant is entitled for the benefit of rounding off the 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, second and third disabilities i.e. **‘PRIMARY HYPERTENSION (IC NO. I 10.0)’**, **‘DYSLIPIDIMIA (ICD NO. E 78)’** and **‘SOLITARY SEIZURE (ICD NO. G 40)’** are neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in December, 2016 and September, 2016 while posted in Peace location (Visakhapatnam) and second disability is a life style disease, therefore, applicant is not entitled to 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. Peace Stations have their own pressure of rigorous Naval training and associated stress and strain of Naval service. The applicant was commissioned in Indian Navy on 06.08.2007 and the first, second

and third disabilities have started after more than 09 years of Navy service i.e. in the year, 2016. 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, second and third disabilities of the applicant should be considered as aggravated by Naval service.

8. This is a case where the fourth disability of the applicant has been held as attributable to Naval service by the RMB. The RMB assessed the fourth disability @20% for life. However, the opinion of the RMB has been overruled by PIFA and fourth disability has been regarded as neither attributable to or aggravated by military service.

9. The issue of sanctity of the opinion of a Release Medical Board and its overruling by a higher formation is no more Res Integra. The Hon'ble Supreme Court in the case of ***Ex. Sapper Mohinder Singh vs. Union of India & Others***, in Civil Appeal No.164 of 1993, decided on 14.01.1993, has made it clear that without physical medical examination of a patient, the accounts branch (in this case PIFA being a Defence Accounts employee) cannot overrule the opinion of a Medical Board. Thus, in light of the observations made by the Hon'ble Apex Court in the case of ***Ex Sapper Mohinder Singh vs. Union of India & Others***, we are of the considered opinion that the decision of PIFA over ruling

the opinion of RMB held at the time retirement of the applicant is void in law. The relevant part of the aforesaid judgment is quoted below:-

“From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core.”

10. Thus in light of the aforesaid judgment (supra) as well as IHQ of MoD (Army) letter dated 25.04.2011 it is clear that the disability assessed by RMB cannot be reduced/overruled by PIFA, hence the decision of PIFA is void. Hence, we are of the opinion that the fourth disability of the applicant should be considered as attributable to Naval service as has been opined by the RMB.

11. 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.”

12. 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.

13. 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.”

14. 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 pension may be extended to the applicant from three preceding years from the date of filing of the Original Application.

15. Since the applicant's RMB for fourth disability was valid for one year w.e.f. 06.08.2017, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension for the fourth disability i.e. '**ANKLE SPRAINS**'.

16. In view of the above, the **Original Application No. 145 of 2021** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability pension, are set aside. Applicant is held entitled to composite disability pension for all four disabilities @60% to be rounded off to @75% for a period of one year from the next date of his retirement and thereafter @46.8% (30% + 3.5% + 13.3%) to be rounded off to 50% for life. However, arrears will be restricted to three years prior to filing of Original Application. The date of filing of Original Application is 26.08.2021. Respondents are directed to pay arrears within a period of four months from the date of order. Default will invite interest @8% per annum from the date of this order. Respondents are further directed to hold Re-Survey Medical Board (RSMB) of the applicant to assess his further disability, if any, in respect of disability No. 4 i.e. '**ANKLE SPRAINS**' and in the event

of disability being existent the Board will assess composite degree of all four disabilities and corrigendum PPO will be issued accordingly within four months from the date of RSMB. Default will invite interest on arrears at the same rate mentioned above from the date of RSMB.

17. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 25 August, 2022

AKD/AMK/-