

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI
CIRCUIT BENCH AT GOA**

ORIGINAL APPLICATION No. 153 of 2021

Friday, this the 23rd day of December, 2022

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

Colonel (TS) Naushirwan M. Irani (Retd.) No. IC-46542-H son of Shri Minoo D. Irani, Occ: Nil, R/o. Row House No.5, Oxford Heritage, Kedarinagar, Wanowrie, Pune, Maharashtra-411040.

..... **Applicant**

Ld. Counsel for the : **Shri 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 Army Staff (for the Additional Directorate General of Manpower (Policy & Planning)/MP-5 (b), AG Branch, IHQ MoD (Army Wing No.3, Ground Floor, West Block-III, RK Puram, New Delhi-110066.
3. The Principal Controller of Defence Accounts (Pensions), G-4/3 Section Draupadi Ghat, Prayagraj-211014.

.....**Respondents**

Ld. Counsel for the : **Shri A. J. Mishra**, 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 :-

“1. Quash and set aside impugned order of the Second Appellate Committee i.e. Adjutant General’s Branch, IHQ MoD (Army) letter No. B/38046A/324/2020/AG/PS-4

(2nd Appeal) dated 11/06/2021, being unjust, unfounded, arbitrary and illegal;

2. *Quash and set aside the arbitrary and unjust reduction in disablement of the disability i.e. "Neuricemmoma Branchial Pleaux C5, C6 Trunks Right Supracla Vicular (Operated) from 30% to 1-5% by the RMB dated 23.04.2018;*
3. *Declare that the disabilities at Serial (1), (2) and (4) were either attributable to or aggravated by Military Service;*
4. *Grant the disability pension at least @50% for life with effect from 01.10.2018;*
5. *Grant the benefit of broad-banding of disability pension to 75% with effect from 01.10.2018;*
6. *Pass such and further orders as deemed necessary to give effect to the applicant."*

2. Briefly stated, applicant was commissioned in the Indian Army on 26.08.1989 and was superannuated from service on 30.09.2018 in Low Medical Category on fulfilling the conditions of his enrolment.

3. Ld. Counsel for the applicant contended that in February, 2008 the applicant suffered from disability "**Bilateral Sensorineural Hearing Loss (B/L SNHL) (H-90.3)**" and was subsequently placed in permanent Low Medical Category. The Categorisation Medical Board dated 13.08.2010 has assessed his disability @ 20%.

4. He further contends that in the month of August 2010 at Haldwani, the applicant suffered from the disability "**Primary Hypertension**" and "**Obesity**". The Medical Board assessed his disabilities @ 30% and Nil respectively and accordingly he was placed in Low Medical Category. On 20.01.2011 at Haldwani he suffered the disability "**VP B'S**". The Medical Board assessed his disability @ 1-5% and he was placed in

permanent Low Medical Category. On 25.09.2014 while posted at Firozpur, he suffered from “**Neuricemmoma Branchial Pleaux C5, C6 Trunks Right Supracla Vicular (Operated)**”. The Medical Board assessed his disability @ 30% and he was placed in LMC.

5. Ld. Counsel for the applicant states that at the time of superannuation, the Release Medical Board (RMB) held at MH Ahmednagar on 23.04.2018 assessed his disabilities as under:

| Release Medical Board dated 23.04.2018 | | | | | |
|--|---|--------------------------------|--|--|--|
| Sr. No. | Disabilities | % of disablement with duration | Composite Assessment for all the disabilities with duration (Max 100%) | Disability qualifying for disability Pension with duration | Net Assessment qualifying for disability pension with duration |
| 1. | Neuricemmoma Branchial Pleaux C5, C6 Trunks Right Supracla Vicular (Operated) | 1-5% for life | 50% for life | Nil | 40% for life. |
| 2. | VPB'S (I-47.2) | 1-5% for life | | Nil | |
| 3. | Primary Hypertension (I-10.0) | 30% for life | | 30% for life | |
| 4. | Obesity (E-66) | 1-5% for life | | Nil | |
| 5. | Bilateral Sensorineural Hearing Loss B/L SNHL (H-90.3) | 20% for life | | 20% for life | |

The RMB opined that disabilities at serial no.5 to be aggravated by military service but unjustly, unreasonably and illegally held the disabilities at serial nos. 1, 2, 3 and 4 to be neither attributable to nor aggravated (NANA) by military service. The applicant’s claim for grant of disability pension was rejected by the Additional Directorate General of Personnel and Services vide letter dated 12.12.2018. The applicant preferred First Appeal which was declined vide letter dated 03.10.2019.

The applicant preferred Second Appeal which was also declined vide dated 11.06.2021. It is in this perspective that the applicant has preferred the present Original Application.

6. Ld 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 diseases of the applicant were contracted during the service, hence they are 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 75%.

7. On the other hand, Ld. Counsel for the respondents contended that disabilities at serial Nos.1 to 4 has been regarded as NANA and disability at serial No.5 is regarded as aggravated by service by the RMB, but was assessed at 15-19% (i.e. less than 20%), hence applicant is not entitled to disability pension. He pleaded for dismissal of the Original Application.

8. 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 two folds:-

- (a) Whether the disabilities of the applicant are attributable to or aggravated by Military Service?

- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

9. 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)."

10. 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, third and fourth disabilities are neither attributable to nor aggravated (NANA) by service on the ground that either these disabilities are not connected with service condition or they started in peace station or was congenital in nature and therefore, applicant is not entitled to disability pension as the net assessment of all diseases was 15-19%. 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 military training and associated stress and strain of military service. The applicant was commissioned in Indian Army on 26.08.1989 and all the disabilities have started after more than 20 years of Army service i.e. in or after 2010. 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 second, third and fifth disabilities of the applicant should also be considered as aggravated by military service.

However, with regard to fourth disability i.e. Obesity, we agree with the opinion of RMB as NANA.

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 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."*

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. In view of the foregoing paras, we hold that the disabilities 1, 2, 3 and 5 are aggravated by Army service and the overall disability is

assessed @ less than 50% for life after discarding disease obesity (1-5%).

15. 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 @ 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

16. In view of the above, the **Original Application No. 153 of 2021** deserves to be allowed, hence **allowed**. The impugned order dated 12.12.2018 rejecting the applicant's claim for grant of disability pension, is set aside. The disabilities 1, 2, 3 and 5 of the applicant are held aggravated by Army Service. Since the applicant is in receipt of service element already, the applicant is entitled to get disability element @50% for life w.e.f. the next date of discharge. The respondents are directed to grant disability element @ 50% w.e.f. next date of 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.

17. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 23rd December, 2022
Amk/-