

Form No. 4  
{See rule 11(1)}  
ORDER SHEET  
ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

M.A. No. 11 of 2020 IN OA NO. 97OF 2020

(Hon.Lt)Virender Kumar  
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><b><u>08.06.2022</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>Heard Shri Y.P. Singh, Ld. Counsel for the applicant and Shri A.J.Mishra, Counsel for the respondents.</p> <p>This Original Application has been filed with delay of 09 years, 09 months and 13 days.</p> <p>Submission of learned counsel for the applicant is that it is a pensionary matter in which bar of limitation is not applicable. His further submission is that delay in filing Original Application is not deliberate, but for the reasons stated in affidavit filed in support of application.</p> <p>Per contra, learned counsel for the respondents submits that explanation of delay offered by the applicant is not sufficient as he has failed to offer day to day explanation of delay.</p> <p>Considering that in pensionary matters bar of limitation is not applicable and grounds stated in affidavit filed in support of delay condonation application are genuine and sufficient, delay is liable to be condoned.</p> <p>Accordingly, delay in filing application is condoned. Delay condonation application stands decided accordingly.</p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"><div style="text-align: center;"><p>_____ (Vice Admiral Abhay Raghunath Karve) Member (A)</p></div><div style="text-align: center;"><p>_____ (Justice Umesh Chandra Srivastava) Member (J)</p></div></div> <p>Mhi/-</p>

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI**

**ORIGINAL APPLICATION No. 97 of 2020**

Wednesday, this the 8th day of June, 2022

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

No. 190180-B, Ex-MCSWA-I (Hon.Lt. Virender Kumar, son of late Shri Ragho Singh, age around 62 years, presently residing at flat No.A-301, Gokul Pride Building, Gokul Township, Virar West, Taluka-Vasai, District-Palghar-401303,  
Maharashtra .. Applicant

Ld. Counsel for the : **Shri Y.P.Singh** , Advocate.  
Applicant

Versus

1. Union of India, (through Defence Secretary to the Government of India, 104, South Block, New Delhi – 110011.
2. The Chief of the Naval Staff Integrated Headquarters of Ministry of Defence (Navy), 104, South Block, New Delhi-110011.
3. The Officer-in-charge Naval Pension Office, C/o INS Tanaji Sion-Trombay Road, Mankhurd, Mumbai 400 088
4. The Commodore, Bureau of Sailors, C/o INS Tanaji, Sion-Trombay Road, Mankhurd, Mumbai 400088.

.....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 :-

- “8.1 Quash and set aside the impugned order of the Appellate Committee on First Appeal (ACFA) i.e. IHQ MoD (Navy) letter No. PN/0134/DP/1210/18 dated 19/06/2019, rejecting the disability claim of the applicant being time barred;
- 8.2 Quash and set aside the impugned decision of the Release Medical Board dated 06/10/2008 holding the disabilities in question Neither attributable to nor aggravated (NANA) by Naval Service;
- 8.3 Grant disability pension for the said disability @ 40% for life with effect from the date as determined on the basis of Tarsem Singh's case;
- 8.4 Grant the benefit of broad-banding of disability pension from 40% to 50%;
- 8.5 Pass such and further orders as deemed necessary.”

2. Briefly stated, applicant was enrolled in the Indian Navy on 24.01.1974 and was discharged on 31.01.2009 after completion of his terms of engagement and after 35 years and 08 days of qualifying service in Low Medical Category S2A2 (Pmt) for the disabilities (i) **'OPEN ANGLE GLAUCOMA BES WITH CATRACT RE (OPTD) ICD H 25.1'** and (ii) **'TYPE II DIABETES MELLITUS ICD E 11'**. At the time of discharge from service, the Release Medical Board (RMB) held at INS Angre on 06.10.2008 assessed his disabilities @ 40% composite for life and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected on the grounds that both the disabilities were found as NANA by the RMB

and the same was communicated to the applicant vide letter dated 16.03.2009. The applicant preferred First Appeal dated 13.05.2019 which too was rejected. Thereafter, the applicant preferred Second Appeal<sup>✓</sup> which was not considered being time-barred. 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 Navy and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Navy. The disease of the applicant was contracted during the service. He submits that he was working in difficult conditions on board Naval ships such as working in engine rooms and in an environment where he was dealing with a variety of gasses including Carbon Mono-oxide, Carbon Di-oxide as also different fuels, oils and lubricants. Hence his disease should be held attributable to and aggravated by Naval Service. He has relied on the order dated 04.05.2018 of AFT Mumbai in OA No.91/2017 in which in exactly similar disease i.e. Open Angle Glaucoma, the Bench has granted disability pension @ 100% to the applicant. Hence the applicant be granted disability pension as well as arrears thereof, as applicant is also entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents concede that the applicant was discharged from service on 31.01.2009 after 35 years and 08 days of qualifying service. He is in receipt of service pension. The respondents contend that disabilities of the applicant (i) 'OPEN ANGLE GLAUCOMA BES WITH CATRACT RE (OPTD) ICD H 25.1' and (ii) 'TYPE II DIABETES MELLITUS ICD E 11' with composite assessment @ 40% for life have been regarded as NANA by the RMB, hence the applicant is not entitled to disability pension. He pleaded for dismissal of the Original Application. The applicant also filed an appeal after nearly 10 years which was suitably replied.

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 two folds:-

- (a) Whether the disability of the applicant is attributable to or aggravated by Naval Service?
- (b) 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 disabilities are neither attributable to nor aggravated (NANA) by service, therefore, the 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. No specific reason has been given by the respondents for treating the diseases as NANA. Onset of the first disease was while serving in INWT, Kochi and second disease was while serving in INS Jamuna. Both these are sea bullets (i.e. field/operational) postings. 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 Naval service.



8. 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."

9. 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."*

10. 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 @ 40% for life 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.

11. In view of the above, the **Original Application No. 97 of 2020** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The disability of the applicant is held as aggravated by Naval Service. The applicant is entitled to get disability element @40% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @40% 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 30.01.2020. 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 from the date of this order till the actual payment.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 8th June, 2022

Mhi/-