

E-CourtARMED FORCES TRIBUNAL, REGIONAL BENCH,
SRINAGAR AT JAMMUS. No. 12

Original Application No. 182 of 2021

Monday, this the 24th day of January, 2023Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Lt. General Ravendra Pal Singh, Member (A)9074382 Ex Sep Chagar Singh,
S/o Sh. Bhagat Ram,
R/o Village Barialta P.O Kargai Tehsil Ram Nagar,
District Udhampur (J&K) Pin-182117

..... Applicant

By Legal Practitioner : **Lt. Col. S.N. Sharma (Retd.)**, Advocate

Versus

1. Union of India, through the Secretary of Defence, South Block, New Delhi- 110011.
2. The Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi- 110011.
3. The Officer-in-Charge Records, DSC Records, PIN -901277 C/o 56 APO.
4. PCDA (P), Draupadi Ghat, Allahabad (UP)-211014

..... Respondents

By Legal Practitioner – **Shri Rajesh Thappa**, CGSCORDER"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:-

(i) *"Direction to the respondents for setting aside impugned opinion of RMB as per Annexure A-5 wherein his*

disability was declared as NANA and impugned letters as per Annexure A-6 & A-9 under which disability element of disability pension claim of the applicant has been rejected/denied by the respondents.

(ii) Direction to the respondents to grant disability element of disability pension to the applicant @40% for life w.e.f. 01.08.1999 along with the benefits of rounding off to @50% w.e.f. 01.08.1999 for life and interest on arrears @ 18% p.a.

(iii) Any other order that the Hon'ble Tribunal may deem fit in the facts and circumstances of the case."

2. Briefly stated, applicant was enrolled in the Indian Army on 08.08.1966 and was discharged on 31.08.1981 in the rank of Sepoy. The applicant was re-enrolled in DSC on 07.07.1984 and discharged on 01.08.1999 in Low Medical Category (LMC) CEE (P) for the disability viz. **"RIGHT RENAL STAGHORN CALCULUS WITH MULTIPLE CALCULI (OPTD)"** after completion of 15 years and 25 days of service. The Release Medical Board (RMB), held on 24.04.1999 assessed the disability of the applicant, **"RIGHT RENAL STAGHORN CALCULUS WITH MULTIPLE CALCULI (OPTD)"** @40% for two years and declared it as neither attributable to nor aggravated by military service. The applicant's claim for grant of disability pension was rejected vide Records letter dated 04.11.1999 on being NANA and constitutional in nature and not related to service. The applicant preferred First Appeal to the respondents and the same was forwarded to the Appellate Authority i.e., Gol, MoD as intimated by the respondents vide PCDA (P) letter

dated 08.10.2001 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant submitted that at the time of enrolment, the applicant was found mentally and physically fit for service in the DSC and there is no note in the service documents that he was suffering from any disease at the time of enrolment in DSC service. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by 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 disability of the applicant @ 40% for two years has been regarded as NANA by the RMB, hence in terms of Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I) and Regulation 53(a) of the Pension Regulations for the Army, 2008 (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 two folds:-

- (a) Whether the disability of the applicant is attributable to or aggravated by DSC Service?
- (b) 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 disability **"RIGHT RENAL STAGHORN CALCULUS WITH MULTIPLE CALCULI (OPTD)"** is neither attributable to nor aggravated (NANA) by military service and not related to military service, 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 element of disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. The applicant was re-enrolled in DSC on 07.07.1984 and discharged on 01.08.1999 and at the time of enrolment in the DSC the applicant was in medical category

SHAPE-1. 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 Army 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 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."*
9. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Union of India and Ors vs Ram Avtar & Ors (supra)*** as well as Government of India, Ministry of Defence letter dated 31.01.2001, we are of the considered view that benefit of rounding off of disability element of disability pension @ 40% for two years to be rounded off to 50% for two years may be extended to the applicant from the next date of his discharge from service.
10. Since the applicant's RB was valid for two years from the next date of discharge from service, i.e. w.e.f. 01.08.1999, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension.
11. In view of the above, the **Original Application No. 182 of 2021** 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 attributable to service. The applicant is entitled to get disability element of disability pension @40% for two years which would be rounded off to 50% for two years from the next date of his discharge from service. The respondents are directed to grant disability element to the applicant @ 50% for two years from the next date of his discharge from service. The respondents are directed to hold Re-survey Medical Board (RSMB) of the applicant to assess his further disability, if any. 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.

12. No order as to costs.
13. Pending Misc. Application(s), if any, shall stand disposed off.

(Lt. General Ravendra Pal Singh)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 24th January, 2023

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