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E-Court

Court No. 1

ARMED FORCES TRIBUNAL REGIONAL BENCH
SRINAGAR AT JAMMU

S. No. 32

ORIGINAL APPLICATION No. 222 of 2021

Thursday, the 12th day of January 2023

CORAM:

HON'BLE DR. JUSTICE UMESH CHANDRA SRIVASTAVA (J)
HON'BLE LT. GENERAL RAVENDRA PAL SINGH, MEMBER (A)

Parshotam Paul

Applicant

(By, Col. (Retd) A.K.Sharma, Advocate)

Versus

Union of India & Ors

Respondents

(By: Mrs. Vandana Sharma, Sr. P.C)

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 :-

- "(i) Directions to respondent for quashing the offending part of Release Medical Board dated 28.01.2020 vide which the disability of the petitioner has been declared as neither attributable to nor aggravated by military service and impugned letter dated 09.05.2020 as attached to Annexure A-2 & A-3 vide which the claim for grant of disability pension of the petitioner has been rejected.
- (ii) Directions to the respondents to release the disability pension consisting of service element and disability element of the petitioner @ 40% against 40 % disability and rounding off to 50% from the date of discharge i.e., 01.02.2020 for life with 18% annual interest till payment be made.

- (iii) *Issue any other appropriate order or direction which this Hon'ble bench may deem fit and proper under the circumstances of the case.*
- (iv) *Exempt from filing the certified copies of Annexures."*

2. Briefly stated, applicant was enrolled in the Army on 31.01.1986 and was discharged on 31.01.2010 after rendering more than 24 years of service in medical category AYE and granted service pension against service rendered in the Army. The applicant was re-enrolled in the DSC service with effect from 01.09.2010 as a fit person and no note of any disability/disorder made at the time of his enrolment in DSC by the Medical Board. The applicant was discharged from second spell of service with effect from 31.01.2020 after rendering 09 years and 05 months of service in DSC in Low Medical Category P-2 (Permanent), under Rule 13 (3) III (iii) (a) (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held on 28.01.2020 assessed his disabilities '**PRIMARY HYPERTENSION**' @30% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 09.05.2020. The applicant preferred First Appeal thereby requested the respondents for grant of disability pension consisting of service element and disability element with rounding off benefits as applicable from the date of his discharge but till date neither the appeal of the applicant was decided nor the claim for grant of disability pension has been considered. The applicant forwarded a representation dated 25.03.2021 through his counsel with a request to grant disability pension consisting of service element and disability element @ 50% against 30% disability for life. However, respondent No.4 vide letter dated 24.04.2021 intimated the applicant that "as per

Regulation 81 of Pension Regulations for the Army, 2008 (Part-1), disability pension consisting of service element and disability element may be granted to an individual, who is invalided out from service on account of disability attributable to or aggravated by military service and held that the applicant is not entitled for grant of disability pension as the disability of the applicant is neither attributable to nor aggravated by military service. 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 Army as well as in DSC and there is no note any disability/deformities as given by the Medical Authorities at the time of his re-enrolment. The diseases of the applicant was contacted during the military service, hence disability is 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 as well as arrears thereof, as applicant is also entitled to disability pension and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @ 30% for life has been regarded as NANA by the RMB, hence as per Regulation 81 of the 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 disabilities of the applicant are attributable to or aggravated by Military/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)].
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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 '**PRIMARY HYPERTENSION P-2 (T-24)**' is neither attributable to nor aggravated (NANA) by service on the ground that the applicant was discharged on completion of terms of engagement. 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 enrolled in the Army on 31.01.1986 and was discharged on 31.01.2010 after rendering more than 24 years of service in medical category AYE and granted service pension against service rendered in the Army. The applicant was re-enrolled in the DSC service with effect from 01.09.2010 as a fit person and no note of any disability/disorder made at the time of his enrolment in DSC by the Medical Board. 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 military/DSC service.

9. 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 noddod 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.

2. 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.

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4. 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.

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6. 8. This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us."

7.

10. 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)*, we are of the considered view that benefit of rounding off of disability element of disability pension @ 30% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge from DSC service.

11. In view of the above, the **Original Application No. 222 of 2021** deserves to be allowed, hence **allowed**. The impugned order rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The applicant is entitled to get disability element @ 30% for life which would be rounded off to 50% for life from the next date of his discharge from DSC service. The respondents are directed to grant disability element to the applicant @ 30% for life which would stand rounded off to 50% for life from the next date of his discharge from DSC service. 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.

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

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 12 January, 2023
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