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**IN THE ARMED FORCES TRIBUNAL  
REGIONAL BENCH, GUWAHATI.**

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**PRESENT**

**HON'BLE DR(MRS) JUSTICE INDIRA SHAH, MEMBER(J)  
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER(A)**

IC-39904 W Col N.N.Singh( Retd)  
Infantry ( MADRAS)  
S/O. Lt. N.K.Singh  
R/O Mongsangei Mamang Leikai  
PO Canchipur, Manipur PIN 795003.

..... **Applicant.**  
**By legal practitioners for  
Applicant.**  
Mrs Rita Devi  
Mr. A.R.Tahbildar

**-VERSUS-**

1. Union of India,  
represented by the Secretary,  
Govt. of India, Ministry of Defence  
Sena Bhawan, New Delhi – 110011.
2. Addl. Directorate General of Personnel  
Services, Adjutant General's Branch,  
Integrated HQ of MOD (Army), Plot No.108(West)  
Brassy Avenue, Church Road, New Delhi-110 001.
3. Principal Chief of Defence Accounts,  
(Pension), Allahabad,  
Allahabad PIN 211014, Uttar Pradesh.

..... **Respondents**  
**By Legal Practitioner for the  
Respondents**  
Mr. D.C.Chakravarty, CGSC

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Date of Hearing : 12.09.2018  
Date of Judgment and order : **30.10.2018**

### **JUDGMENT AND ORDER.**

*(Dr(Mrs)Justice Indira Shah)*

The applicant was commissioned in 7<sup>th</sup> Battalion, Madras Regiment of the Army on 19.12.1981 and superannuated from service from the rank of Colonel on 30.12.2014 in Low Medical Category A3(P). Prior to his discharge on superannuation he was subjected to Release Medical Board (hereinafter referred to as RMB) which opined that the applicant's disability is aggravated by military service and assessed his disability at 30% for life. In spite of the aforesaid opinion of the RMB, the disability pension claimed by the applicant was rejected by the authority on the ground that his disability is neither attributable to nor aggravated by military service. The first and thereafter, the second appeal against the said rejection of the disability claim were also rejected. Being aggrieved, the applicant has filed this application praying for quashing and setting aside the impugned order dated 07.06.2017.

[2] Heard Mr.A.R.Tahbildar, learned counsel appearing for the applicant and Mr. D.C.Chakravarty, learned CGSC assisted by

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Cap. Akash Vashishta, OIC, AFT Legal Cell, Guwahati, I appearing for the respondents.

[3] It is averred in the OA that during the service period of 32 years and 9 months, the applicant served in extremely difficult terrain and operational areas for 32 years and had peace tenure of 9 years 8 months only which includes 3 years of tenures with NSG. He was subjected to extreme strenuous physical activities during training and service period.

[4] The facts leading to superannuation from service of the applicant in Low Medical Category are that the applicant was granted annual leave from 13.01.1993 to 14.03.1993 and while returning to the Unit to rejoin his duties after availing annual leave, the bus in which the applicant was travelling met with an accident on 11.3.1993 near Kohima (Nagaland) causing multiple grievous injuries to the applicant. The applicant was immediately admitted to a nearby Naga hospital and on the very next day i.e. on 12.03.1993, he was shifted to 154 GH Zakhama wherefrom he was discharged on 03.04.1993 in Low Medical Category (S1H1A4P1E1 ) with sick leave for four weeks.

[5] A Court of Inquiry was held and the Court opined that the injury sustained by the applicant in the aforesaid bus accident on 11.03.1993 was while performing *bonafide* military duty i.e. while returning from annual leave to rejoin his Unit and

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that the injury sustained by the applicant is attributable to Military Service. Subsequently, the applicant recovered from the injury and was upgraded to SHAPE- 1 on 21.10.1993 by a Review Medical Board.

[6] It is the case of the applicant that his physical efficiency/standard started deteriorating day by day and intermittently the applicant suffered from lower backache, knee joints pains etc. However, the applicant continued to serve in different field areas as per the postings. In the year 2013, applicant's knee joints pain aggravated during operation alert in September, 2013 in the rugged high altitude Sino-Indian Border of Tawang (Arunachal Pradesh) and he reported to 180 MH for treatment on 15.11.2013 wherefrom he was referred to 151 Base Hospital wherein the Orthopaedics specialist / surgeon diagnosed him with " Osteoarthritis ( B/L) Knee" and placed in Low Medical Category A3 ( T-24).

[7] Before his discharge from service on superannuation, the applicant was subjected to RMB. The RMB assessed the applicant's disability at 30% for life with S1H1 A3(P) E1 and opined that *"the disability is aggravated due to physical strenuous activity of Military Service in CI Ops area as per Para 56 of chapter VI of GMO 2008"* and recommended 30% disability pension for life. The recommendations of the RMB were

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approved and confirmed by the medical authorities of various Headquarters in chain of command including officiating Major General (Medical), Eastern Command. The applicant was denied re-employment in army for another four years i.e. from 1.11.2014 to 30.9.2018 to which the applicant was otherwise entitled to as he was discharged in Low Medical Category A3( T-24).

[8] The contention of the applicant is that he is entitled to disability pension as per law and his initial claim for disability pension was arbitrarily rejected by the respondents authority holding that his disability is neither attributable to nor aggravated by Military Service. Both the appeals preferred by the applicant were rejected on the same ground.

[9] Per contra, the respondents in their counter affidavit have admitted that the applicant retired from service on reaching the age of superannuation on 30.09.2014 and at the time of retirement from service he was brought before the duly constituted RMB on 17.11.1999 and the RMB opined that the applicant suffered disability of 30% for life and it was aggravated by Military Service. The respondents have also admitted that the initial claim for disability was rejected on the ground that disability suffered by the applicant was neither attributable to nor aggravated by military service. In the first

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appeal, the appellate committee observed that the disability of the applicant is progressive and age related disease. The applicant remained in SHAPE-1 for entire service period except seven months prior to retirement and therefore, the applicant did not fulfill the eligibility conditions as per existing rules/provisions for grant of disability pension.

[10] In the second appeal, the appellate committee observed that the applicant was in SHAPE-1 till February, 2014 when he was downgraded for the first time for his ID "Osteoarthritis both knee" just 7 months prior to his superannuation. There is no case sheet or other medical documents corroborating the onset of the same in 2010 except a mention in the RMB.

[11] The respondents have also disputed the claim of the applicant on the ground that the applicant was not invalided out of service because of the injury sustained by him during the course of bus accident that took place on 10.3.1993 but he retired from service on reaching the age of superannuation on 30.09.2014, after rendering service in the Army for more than 32 years 9 months. As he was not invalided out of service due to the disability suffered by him, he is not entitled to disability pension.

[12] It is submitted by Mr. Tahbildar, learned counsel for the applicant that as per Rule 53(a) of the Defence Services

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Regulations Pension Regulations for the Army, Part-I (2008), an individual irrespective of his nature of discharge is entitled for disability pension, if the disability is assessed at 20% or more by the Release Medical Board (RMB) and the same is either attributable to or aggravated by Military Service.

Rule 53(a) of Pension Regulations for the Army Part-I (2008) may be quoted hereinunder :

***DISABILITY ELEMENT FOR DISABILITY AT THE TIME OF DISCHARGE/RETIEMENT.***

*53.(a) An individual released/retired/discharged on completion of term of engagement or*

*On completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement /discharge, if the accepted degree of disability is assessed at 20 percent or more".*

[13] Clause 37(a) of Defence Service Regulations Pension Regulations for the Army Part –I ( 2008) which speaks about disability element in addition to retiring pension to Officer retired on attaining the prescribed age of retirement is quoted hereinunder :

***“DISABILITY ELEMENT IN ADDITION TO RETIRING PENSION TO OFFICER RETIRED ON ATTAING THE PRESCRIBED AGE OF RETIRMENT.***

*37(a) An Officer who retires on attaining the prescribed age of retirement or on completion of tenure, if found suffering on retirement, from a disability which is either attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted in addition to the retiring*

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*pension admissible, a disability element from the date of retirement if the degree of disability is accepted at 20% or more."*

[14] It is evident from the above mentioned Rules i.e. Rule 53(a) and Rule 37(a) that an Armed Force Personnel even if he retires on completion of tenure, and not invalided out from service, with disability attributable to or aggravated by Military Service, is eligible for Disability Element of Pension.

[15] Respondents have not disputed that the applicant while on operation in September, 2013 in the rugged high altitude Sino-Indian Boarder of Tawang (Arunachal Pradesh) was reported to 180 MH for treatment on 15.11.2013 and therefrom was referred to the 151 Base Hospital wherein the Orthopaedics Specialist/Surgeon diagnosed him with "Osteoarthritis (B/L) Knee" and placed him in Low Medical Category A3 (T-24). It is evident that the RMB, in its proceedings had found the percentage of disablement of the applicant as 30% for life and aggravated by Military Service. The initial claim of the applicant for disability vide AG's Branch letter No. 52334/MADRAS/IC-39904W/MP-6(D)341/2014/AG/PS-4(IMP-II) dated 25.12.2014 says that the disability was not connected with service. But no reason whatsoever has been assigned for such opinion. The first and second appeal was rejected on the same ground. In the second appeal, it was observed:-



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" Documents reveal that the Officer was in SHAPE-I till February, 2014 when he was downgraded for the first time for his ID "Osteoarthritis Both Knees" just seven months prior to his superannuation. There is no case sheet or other medical documents corroborating onset in 2010 except a mention in the RMB. Hence, the ID merits to be conceded as neither attributable to nor aggravated by Military Service in terms of Para 56, Chap VI of GMO 2002, Amendment-2008".

[16] The applicant retired from service on reaching the age of superannuation on 30.09.2014, after rendering service in the Army for more than 32 years 9 months. Though there were no medical documents of onset of the applicant's ailment in 2010 except in the RMB, there is no denial of the fact that the applicant's knee joint pain aggravated during operation Alert in September, 2013 in rugged High Altitude Sino-Indian Border of Tawang (Arunachal Pradesh). The opinion of MAJ S M ADIL GD, Spl (Orthopaedics) 151 BH (Annexure-B) dated 29 November, 2013 corroborates the fact that the onset of disablement may be due to Military Service and certainly the disability is aggravated due to physical strenuous activity of Military Service.

[17] In the case of **Union of India and another VS. Rajbir Singh ( 2015) 12 SCC 264**, the case of **Dharamvir Singh Vs. Union of India (2013) 7 SCC 316** was revisited and it was held that a member of the Armed Forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary at the time of such entry. More importantly, in the event of subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to Military Service. It was also

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observed that denial of disability pension can be justified only when it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of Military Service aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same.

Appendix II of 'Entitlement Rules for Casualty Pensionary Awards, 1982', states :-

*"Rule 9.ONUS OF PROOF. The claimant shall not be called upon to prove the conditions of entitlements. He/She will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases"*

[18] In the instant case, the applicant entered into Military Service on 19.12.1981. He sustained multiple injuries on 11.3.1993 while performing *bonafide* military duty. After treatment he recovered and was upgraded to SHAPE I on 21 Oct.1993 by a Review Medical Board. But during Operation Alert in Sept.2013, he suffered knee joint pain while performing his duty in High Altitude Sino-India Border of Tawang. He was diagnosed "Osteoarthritis (B/L) Knee" and was placed in Low Medical Category A3 (T-24). Before discharge from service on superannuation, the RMB also assessed applicant's disability as 30% for life with S1H1A3(P) E1 and opined that the disability is aggravated due to physical strenuous activities of Military Service in CI OPS area and recommended 30% disability pension for life.

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[19] In view of above mentioned circumstances, we have no doubt that the disability of the applicant is aggravated by Military Service. In **Civil Appeal No. 418 of 2012 ( Union of India Vs. Ram Avtar)**, it was clearly held that the personnel who were suffering from any disability, attributable to or aggravated by Military Service were entitled to the benefit of rounding off, even on superannuation or if discharged on completion of the term of engagement. The revised policy of the Government also does not make any difference between those who invalided out or those who had retired on superannuation on completion of term of engagement.

[20] The letter F No. 3(11)2010-D ( Pen/Legal) Pt V, Ministry of Defence, Department of Ex-Servicemen Welfare D (Pension /Legal) dated 18<sup>th</sup> April 2016, addressed to the Chief of Army/Naval/Air staff by the Under Secretary to the Govt. of India (Annexure-E) may be reproduced hereinbelow :

" F. No. 3(11)2010-D(Pen/Legal)-Pt V  
Ministry of Defence  
Department of Ex-Servicemen Welfare  
D(Pension/Legal)

New Delhi, 18<sup>th</sup> April 2016

To  
Chief of the Army Staff  
Chief of the Naval Staff  
Chief of the Air Staff

Subject: Broad Banding of Disability Element in respect of Armed Forces personnel retired/discharged on completion of

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terms of engagement with disability aggravated by or attributable to Military Service-Implementation of Court/AFT orders.

The Hon'ble Supreme Court vide order dated 10.12.2014 dismissed more than 800 Civil Appeals tagged with Civil Appeal No. 418 of 2012 filed by the Union of India Vs Ram Avtar challenging grant of broad banding of disability element by AFTs to Armed Forces personnel other than "Invalided out" from service. The Hon'ble Supreme Court ruled that Armed Force personnel retired on completion of tenure with disability aggravated by or attributable to Military Service is eligible for broad banding of Disability Pension/Element.

2. The matter of implementing Hon'ble Apex Court judgment dated 10.12.2014 in case of Civil Appeal No. 418 of 2012 was taken up with Department of Expenditure, Ministry of Finance for consideration. Department of Expenditure, Ministry of Finance has agreed to implement orders of the Courts on the matter of broad banding of disability element in case of personnel who are retained in service till normal retirement. Accordingly, approval of Competent Authority is hereby conveyed for implementation of Court/AFTs orders granting broad banding of disability element to an Armed Force Personnel retired or discharged on completion of terms of engagement with disability aggravated by or attributable to Military service from the date mentioned in respective court orders.

3. This issues with concurrence of MoD(Fin/Pen) vide u.o. No. 711/Fin/Pen dated 12.04.2016.

(R.K.Verma)

Under Secretary to the Govt of India"

[21] So far the issue of entitlement to the benefit of rounding off/board banding is concerned, the issue is no longer *res integra* in view of catena of decisions rendered by this Tribunal as well as the Kochi bench of the Tribunal.

It is, therefore, observed that the Govt. has approved granting of benefit of broad banding of disability element of pension to even personnel who were retired or discharged on completion of terms of engagement.

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[22] In view of the foregoing discussions, the Original Application is allowed declaring that the applicant is entitled to get disability pension along with rounding off benefit from 30% to 50% with effect from the date of his discharge with arrears with simple interest @ 9% per annum from the said date till the date of payment. The arrear with interest shall be paid within six months from the date of receipt of a copy of this Order.

[23] OA is accordingly allowed to the extent indicated above.

[24] No costs.

**MEMBER(A)**

**MEMBER(J)**

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