

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
GUWAHATI**

ORIGINAL APPLICATION No. 18 of 2020

Monday, this the 3rd day of April, 2023

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Air Marshal Balakrishnan Suresh, Member (A)”**

No. 4354683K Ex. Nk. Henkhosei Kuki

..... Applicant

Ld. Counsel for the Applicant : **Shri A.R. Tahbildar**, Advocate.

Versus

Union of India & Others

.....**Responde
nts**

Ld. Counsel for the Respondents. : **Shri P. Sharma**, Advocate
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) *To quash and set aside the impugned communication issued by the Record Officer, Records The Assam Regiment vide letter No. 4030/4354683K/Pen(DP) dated 18.03.2019 rejecting applicant's claim for disability pension for disability "OSTEO ARTHRITIS BOTH KNEE" and rounding off benefits.*
- 8.2) *To accept the third disability "OSTEO ARTHRITIS BOTH KNEE" as attributable to and aggravated by military service and grant disability element of pension to the applicant.*
- 8.3) *To grant rounding off benefit for the composite percentage from 60% to 75% to the applicant with effect from the date of his discharge from service with arrear and interest thereon.*
- And/or pass such further order/orders as to your Lordships may deem fit and proper.*

2. Briefly stated, applicant was enrolled in the Indian Army on 25.01.1981 and was discharged from service on 31.01.2005 in Low Medical Category on completion of terms of engagement under Rule 13(3) Item III (iii) (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held on 06.09.2004 assessed his disabilities (i) '**METAL ATRESIA (RT) (OPTD)**' and '**SNHL (RT)**', both disabilities @20% for life as attributable to military service (as War

Injury) and (iii) **'OSTEO ARTRITIS BOTH KNEES' @40%** for life as neither attributable to nor aggravated (NANA) by service, **composite disabilities @60% for life.** Accordingly, the applicant was granted **War Injury Element of pension @20%** for life. But the applicant's claim for grant of disability element of disability pension for the third disability was rejected. The applicant preferred First Appeal dated 17.04.2019 which too was rejected vide letter dated 12.07.2019. The applicant preferred application dated 04.10.2019 which too was rejected vide letter dated 28.11.2019. 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 and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The third disease of the applicant has been regarded as neither attributable to nor aggravated by service. This disease of the applicant was also contracted during the service, hence it is also 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 element of disability pension and its rounding off to 75% for the third disability also.

4. On the other hand, Ld. Counsel for the respondents contended that the first and second diseases of the applicant have been regarded as attributable (War Injury) to military service, hence, he was granted War Injury element @20% for life. He further contended that third disability i.e. '**OSTEO ARTRITIS BOTH KNEES**' of the applicant @ 40% for life has been regarded as NANA by the RMB, hence applicant is not entitled to disability element of disability pension for the third disability. 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 third disability i.e. "**OSTEO ARTRITIS BOTH KNEES**" of the applicant is also attributable to or aggravated by Military Service?

- (b) Whether the applicant is entitled for the benefit of rounding off the War Injury/disability element of pension for third disability also?

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 third disability '**OSTEO ARTRITIS BOTH**

KNEES' is neither attributable to nor aggravated (NANA) by service on the ground of degenerative disease not connected with service, therefore, applicant is not entitled to disability element of disability pension for this disability. 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 for the third disability is cryptic, not convincing and doesn't reflect the complete truth on the matter. The applicant was enrolled in Indian Army on 25.01.1981 and the third disability has started after more than 26 years of Army service i.e. in June, 2009. 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 third disability i.e. '**OSTEO ARTRITIS BOTH KNEES**' of the applicant should also be considered as aggravated by military 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. 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.

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)*** 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 element of disability pension @60% for life to be rounded off to 75% for life may be extended to the applicant for the third disability also from the next date of his discharge.

11. In view of the above, the **Original Application No. 18 of 2020** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension for the third disability '**OSTEO ARTRITIS BOTH KNEES**' are set aside. Be it mentioned that the applicant's first and second disabilities (injuries) have already been regarded as attributable to or aggravated by military service and the applicant is getting War Injury Element @20%. The third disability i.e. '**OSTEO ARTRITIS BOTH KNEES**' of the applicant is also held as aggravated by Army Service. The applicant is held entitled to get disability element @60% for life which would be rounded off to 75% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @60% for life which would stand rounded off to 75% for life from the next date of his discharge. However, in view of law laid down by the Hon'ble

Apex Court in the case of ***Shiv Dass vs. Union of India***, reported in 2007 (3) SLR 445, the arrears of disability element of pension @60% to be rounded off to 75% shall be restricted with effect from three years prior to filing of the Original Application. The War Injury Element of pension paid from the three years prior to filing of the Original Application shall be adjusted from the arrears. The date of filing of Original Application is 12.03.2020. 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 till the actual payment

12. No order as to costs.

**(Air Marshal Balakrishnan Suresh)
Member (A)**

**(Justice Umesh Chandra Srivastava)
Member (J)**

Dated : 03 April, 2023

AKD/MC/-