

RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI

ORIGINAL APPLICATION No. 04 OF 2024

Friday, this the 20th day of March, 2026

**“Hon’ble Mr. Justice SK Gupta, Member (J)
Hon’ble Lt Gen CP Mohanty, Member (A)”**

Army No 15175657A Ex Hav (MACP Nb Sub) Raphael Lalfamkima, resident of village-Venglai (near St Johns HSS), P.O.-Kolasib, Distt-Kolasib, State-Mizoram, Pin-796081.

..... Applicant

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

Versus

1. The Union of India, Represented by the Secretary, Ministry of Defence, Sena Bhawan, New Delhi-1.
2. The Officer-in-Charge, Artillery Records, Nasik Road Camp, Distt-Nasik, State-Maharashtra, PIN-422102.
3. The Addl Directorate General of Personnel Services, Adjutant General’s Branch, Integrated HQ of MoD (Army), MP-6 (C), New Delhi.
4. The Principal Chief of Defence Accounts (Pension), Draupadi Ghat, Allahabad-211014.

.....Respondents

Ld. Counsel for the Respondents. : **Shri PK Garodia, Advocate**
Central Govt. Counsel

ORDER

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(i) To quash and set aside the impugned order No B/40502/427/2022/AG/PS-4 (1st appeal) dated 10 November, 2022 (Annexure/page 37) issued by Dy AG/PS-4 (1st appeal) for Adjutant General wherein and whereby applicant's 1st appeal against rejection of initial claim for grant of disability element of pension was not approved holding applicant's disabilities to be neither attributable to nor aggravated by military service.

(ii) To direct the authorities to grant disability element of pension with rounding off benefit @ 50% for life in terms of the composite assessment made by the Release Medical Board to the applicant with arrear and interest thereon w.e.f. 01.06.2021.

(iii) And/or pass such order or further order(s) as your Lordship may deem fit and proper.

2. Briefly stated, the applicant was enrolled in the Indian Army on 30.06.2005 and he was discharged from service w.e.f. 31.05.2021 in Low Medical Category S1H1A1P2(P)E1 in terms of Rule 13 (3) III (iii) (a) (i) of Army Rules, 1954 read in conjunction with Rule 2A based on the unwillingness certificate dated 29.08.2020. During the course of his service, he suffered

with 'Primary Hypertension and Dyslipidemia' for which he was placed in low medical category. The applicant is in receipt of service pension. Before discharge from service, the Release Medical Board (RMB) held at Command Hospital (Southern Command), Pune on 28.02.2021 assessed his disabilities (i) Primary Hypertension @ 30 % for life and (ii) Dyslipidemia @ 5% for life (composite disability @ 34% for life) and opined the disabilities to be neither attributable to nor aggravated (NANA) by military service. The applicant's claim for grant of disability element of pension was rejected vide letter dated 21.10.2021. Aggrieved by the rejection of claim for grant of disability element pension, the applicant had preferred his first appeal dated 17.01.2022 before the First Appellate Authority which too was rejected vide letter dated 10.11.2022 and communicated to the applicant vide letter dated 07.12.2022 with an advice to prefer second appeal. After rejection of his first appeal, the applicant preferred second appeal dated 10.03.2023 which has not been decided till date, hence this O.A. has been filed for grant of disability element of pension.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found medically and physically fit for service in the Army and there is no note in the service documents of the applicant that he was suffering from any disability at the time of enrolment in Army. The disabilities of the applicant were contracted during the service, hence both the disabilities are either attributable to or aggravated by Army Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of pension in similar cases, as such the applicant be granted disability element of pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant i.e. **'Primary Hypertension and Dyslipidemia'** have been regarded as 34% for life by RMB as neither attributable to nor aggravated by military service and onset is in peace area and not connected with service. The applicant has rendered his unwillingness to continue in service due to his disabilities and accordingly, he has

been discharged from service in low medical category due to non-availability of sheltered appointment in the unit. Hence, as per Rule 173 of Pension Regulations for the Army, 1961 (Part-1) and Rule 81 (a) of Pension Regulations for the Army, 2008 (Part-1), applicant is not entitled for disability element of pension. He pleaded for dismissal of the O.A.

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 fold:-

- (a) Whether the disabilities of the applicant are attributable to or aggravated by military 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)].*

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 'Primary Hypertension and Dyslipidemia' are neither attributable to nor aggravated (NANA) by military service on the ground of onset of disabilities was in peace area and life style disorder, therefore, the applicant is not entitled to disability element of 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 pension to the applicant is not convincing and doesn't reflect the complete truth on the matter as peace stations have their own pressure of rigorous training and associated stress and strain of military service. The applicant was enrolled in Indian Army on 30.06.2005 and the disabilities had started after completion of 14 years' service in the year 2019. We are, therefore, of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of the Hon'ble Supreme Court judgment in the case of ***Dharamvir Singh vs. Union of India & Ors***, (2013) 7 SCC 316, and the disabilities of the applicant should be considered as aggravated by military service.

8. The law on the point of rounding off of disability element of pension is no more RES INTEGRA in view of the 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."

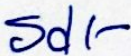
9. It is worthwhile to mention that the applicant was discharged from service in the year 2021 and he filed this O.A. in the year 2024, therefore, limitation for grant of disability element of pension in this case is not applicable as in any case he is entitled to get disability element of pension w.e.f. three preceding years from the date of filing of the present O.A. as held in the case of *Shiv Dass vs. Union of India*, reported in 2007 (3) SLR 445.

10. In view of the above, the Original Application No. 04 of 2024 deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of pension, are set aside. The disabilities of the

applicant are held as aggravated by military service. The applicant is entitled to get disability element @ 34% for life which would be rounded off to 50% for life w.e.f. date of discharge. The respondents are directed to grant disability element of pension to the applicant @ 34% for life which would stand rounded off to 50% for life w.e.f. date of discharge. 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

11. No order as to costs.

12. Miscellaneous application(s), pending if any, stand isposed off.



(Lt Gen CP Mohanty)
Member (A)



(Justice SK Gupta)
Member (J)

Dated : 20.03.2026

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