

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

Original Application No. 10 of 2025

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. 4368864A Ex Hav Bidhu Bhusan Goyari, village-
Goyabari, P.O.-Narayanpur, Distt-Nalbari, Assam-781372.

.... Applicant

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

Versus

1. Union of India, Represented by the Secretary, Department of Ex-servicemen Welfare, 5-A, South Block, New Delhi-11.
2. The Officer-in-Charge Records, The Assam Regiment, Pin-900332, C/o 99 APO.
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: **Shri PJ Barman, Advocate**
Respondents. Central Govt Counsel.

ORDER

1. This O.A. has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 seeking the following reliefs:-

(i) To quash and set aside the impugned No B/40502/944/2024/AG/PS-8 dated 25th September, 2024 (Annexure-F/page 47) issued by the Dy Director AG/PS-8 for Adjutant General wherein and whereby applicant's 1st Appeal against rejection of initial claim for grant of disability element of disability 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, and/or pass such other or further order(s) as your Lordships may deem fit and proper.

2. Brief facts of the case are that the applicant was enrolled in the Army on 09.08.2000 and was discharged from service on 30.11.2021 (AN), in low medical category 'S1H2(P)A1P1E1' (permanent) having rendered 21 years and 23 days service. Prior to discharge from service his Release Medical Board (RMB) was conducted which assessed his disability 'Benign Fibrous Histiocytoma (R) Temporal Bone (Optd) (D-36)' @ 20% for life neither attributable to nor aggravated by military service

(NANA). Disability element of pension claim of the applicant was rejected vide order dated 21.12.2021 which was communicated to the applicant vide letter dated 29.01.2022 informing him that he is not entitled to disability element of pension in terms of Para 173 of the Pension Regulations for the Army, 1961 (Part-I). Thereafter, the applicant submitted an application dated 12.09.2023 requesting for issue of RMB proceedings and on receipt of the same he preferred 1st appeal dated 02.02.2024, which was rejected vide order dated 25.09.2024, hence this O.A. has been filed for grant of disability element of pension.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in the Army service and any disability not recorded at the time of recruitment should be presumed to have been caused subsequently. The action of the respondents in denying disability element of pension to the applicant is illegal and arbitrary. In this regard during the course of hearing, he relied upon the decision of the Hon'ble Supreme Court in the case of ***Dharamvir Singh v. Union of India & Others***, (2013) 7

SCC 316, and submitted that for the purpose of determining attributability of the disease/disability to military service, what is material is whether the disability was detected during the initial enrolment medical board and if no disability was detected at that time, then it is to be presumed that the disability arose while in service, therefore, the disability of the applicant is to be considered as aggravated by service and he is entitled to get disability element of pension duly rounded off.

4. On the other hand, learned counsel for the respondents submitted that though the RSMB has assessed the disability of the applicant @ 20% for life, it opined that the disability is neither attributable to nor aggravated by military service (NANA). As such, his claim for disability element of pension has rightly been rejected by the respondents. He pleaded for dismissal of O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB 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 military service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability of 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 'Benign Fibrous Histiocytoma (R) Temporal Bone (Optd) (D-36)' is neither attributable to nor

aggravated (NANA) by military service but no reason has been assigned, therefore, the applicant is not entitled to disability element of pension. However, considering the facts and circumstances of the case, we are of the considered view 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. The applicant was enrolled in Indian Army on 09.08.2000 and the disability of the applicant was first detected in September, 2012 i.e. after about 12 years' service. 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*** (supra), and the disability 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 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. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If

petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

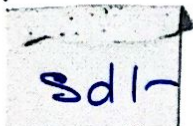
11. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)** as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application, which was filed on 05.08.2025.

12. In view of the above, the **Original Application No. 10/2025** 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 disability of the applicant is held as aggravated by military Service. The applicant is entitled to get disability element @ 20% for life which would be rounded off to 50% for life from the next date of

his discharge. However, the applicant is entitled to get arrears of disability element of pension w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @ 20% for life which would stand rounded off to 50% for life from three years preceding the date of filing of Original Application. 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

13. No order as to costs.

14. Miscellaneous application(s), pending, if any, stand disposed off.



(Lt Gen CP Mohanty)
Member(A)

Dated: 20.03.2026

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(Justice SK Gupta)
Member (J)