

**(2025) 09 J&K CK 0485**  
**In the Jammu And Kashmir High Court**  
**Case No : WP(C) No. 2103 Of 2024**

Union of India & ors

APPELLANT

Vs

IC-47071M Col (Retd) Kamal Singh Bhadwal

RESPONDENT

**Date of Decision :** 11-09-2025

**Acts Referred:**

**Citation :** (2025) 09 J&K CK 0485

**Hon'ble Judges :** Sindhu Sharma, J; Shahzad Azeem, J

**Bench :** Division Bench

**Advocate :** Vishal Sharma, Subodh Singh Jamwal

**Final Decision :** Dismissed

## Judgement

Sindhu Sharma, J

1. The present petition has been preferred by the Union of India for setting aside the order dated 13.03.2023 passed by the learned Armed Forces Tribunal, Srinagar Bench at Jammu in Original Application No. 07 of 2021 titled Col. (Retd.) Kamal Singh Bhadwal, by virtue of which, the respondent herein was held entitled to disability element of disability pension.

2. Briefly stated, the facts giving rise to this petition are that the respondent herein was commissioned in the Indian Army on 19.12.1987 and was granted permanent commission on 08.11.1988. He was superannuated from services on 30.04.2016 in Medical Category Shape-I and he was granted re-employment with effect from 01.07.2016 in the Indian Army and posted at 508 ASC Battalion with utilization by 8 Mountain Division, and released from re-employment service on 17.04.2020.

3. The contention of the respondent is that while at Kumbathang (Kargil) High Altitude Area, the petitioner suffered an Ischemic Stroke Left MCA territory due to the effects of High Altitude Area and extreme cold climatic conditions and suffered/confirmed Lacunar Infarct Left Parietal Region of the respondent's brain

and thereafter, at the time of the release, the officer was in low medical category and was brought before a duly constituted Release Medical Board, which assessed the disability of retired officer as CVA (LT) MCA Territory Infarct (1-63.6) with 70% disability for life.

4. The respondent applied for grant of disability pension which was rejected vide letter dated 04.03.2020 by stating that "as the re-employment of the officer was not terminated on account of ID held attributable/aggravated, he is not entitled to grant of disability pension and hence there is no need to process the case further.

5. Feeling aggrieved of the rejection of his case, the respondent filed an Original Application before the learned Armed Forces Tribunal, Regional Bench, Srinagar at Jammu

(hereinafter referred to as 'learned Tribunal') for setting aside of the order, rejecting his claim for grant of disability element and directing the respondents (petitioners herein) to release the disability element of pension in favour of the petitioner from the date of release from re-employment of service i.e., 17.04.2020 and broadbanning the disability from 70% to 75%. This Original Application was allowed by the learned Tribunal vide order dated 13.03.2023. The operative portion of the order reads as under:

"8. As such, in view of the decision of the Hon'ble Supreme Court in case titled Union of India & others versus Ram Avtar & others 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 at the rate of 70% for life to be rounded off to 75% of life may be extended to the applicant from the date of his retirement.

9. In view of the above, the Original Application No. 07 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 held entitled for the grant of disability element of disability pension even if he was retired from service on completion of terms of re-employment. The applicant is entitled to get disability element @70% for life which would be rounded off to 75% for life from the next date of his retirement. The respondents are directed to grant disability element to the applicant @70% for life which would stand rounded off to 75% for life from the next date of his retirement. 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."

6. The petitioners herein are aggrieved of the order dated 13.03.2023 passed by the learned Tribunal on the ground that the learned Tribunal had failed to interpret the relevant Pension Regulations as the same are applicable only to those persons, who are invalidated out of services, and not to those, who are discharged on completion of the terms of engagement or some other grounds. It

is further submitted that as per Regulation 72(iii) of Pension Regulations for Army, 2008 Part-II and Para No. 25(a) of SIA-1/S/80, the disability pension could only be granted if the services of the re-employed are terminated on account of disability attributable or aggravated by military service. Since the re-employment of the respondent is not terminated on account of disability, he is not entitled to grant of disability pension. There was no causal connection established by the respondent between disability and military service for claiming disability pension.

7. The contention of the respondent is that he was granted re-employment after following due procedure, and nothing adverse was detected during medical examination. No note of any ailment or disability was made by the authority examining them at the time of enrollment. The disability occurred while he was serving in High Altitude area due to conditions of service and hence any disability which occurred due to conditions of service is aggravated and attributable to Military service, as such, he is entitled to disability pension, denial of the same is unjust and arbitrary.

8. Heard learned counsel for the parties.

9. The purpose of granting disability pension to the personnel of Indian Armed Forces is to provide necessary financial support to those who have sustained disability during the course of their service due to service conditions. This is to ensure that those who suffer disability due to service conditions are able to live with financial security and dignity.

10. In *Dharamvir Singh vs. Union of India & ors.* reported as 2013 (7) SCC 316, the Hon'ble Supreme Court has emphasized that if no disability or disease is recorded at the time of enrolment and if the medical authorities cannot provide reasons for disability to detect the disease at that time, it would be presumed to be attributed to or has arisen during the service. The burden of proof lies with the employee to establish non-entitlement of the person for disability pension.

11. In *Union of India & anr. vs. Rajbir Singh* reported as (2015) 12 SCC 264, the Hon'ble Supreme Court has held as under:-

"10. From a conjoint and harmonious reading of Rules 5, 9 and 14 of Entitlement Rules (supra) the following guiding principles emerge;

i) a member is presumed to have been in sound Physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance,

ii) in the event of his being discharged from service on medical grounds at any subsequent stage it must be presumed that any such deterioration in his health which has taken place is due to such military service;

iii) the disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the Individual's acceptance for military service; and

iv) if medical opinion holds that the disease, because of which the individual was discharged, could not have been detected on medical examination prior to acceptance of service. reasons for the same shall be stated.”

12. In their response before the Tribunal, the petitioners have admitted that the respondent has suffered Ischemic Stroke Left MCA territory in Kumbathang (Kargil). The disability of the officer has been conceded as attributable to Military Service @ 70% but disability pension has been denied on the ground that re-employment of the petitioner was not terminated on account of disability. Reliance was placed on Regulation 72(iii) of Pension Regulations for the Army, 2008 which provides that officers, who retire from Army service on completion of age limit in medical category SHAPE-I and are re-employed in the army and are found to be in low medical category during such re-employment unless re-employment is terminated on account of disability are not entitled to disability pension. Similarly, 25(a) also stipulates that disability pension could be granted only to re-employed officer, whose employment is terminated on account of disability attributable or aggravated by military service.

13. The Tribunal after considering the pleadings framed following two questions while deciding the OA:-

(i) Whether the applicant is entitled for the grant of benefit of disability element of disability pension, even if his services of re-employment has not been terminated on account of disability ?

(ii) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

14. Both these questions were decided in favour of the respondent. The Tribunal relied upon 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 and held that even if those persons, who had retired from service on completion of terms of re-employment, would be entitled for the grant of disability pension.

15. While considering the issue regarding rounding off disability pension, the Tribunal relied on the judgment in case titled Union of India and Ram Avtar & ors. (Civil appeal

No 418 of 2012 decided on 10<sup>th</sup> December 2014). We are in agreement with the view taken by the Tribunal. It is well settled that even those individuals who retired from service or re-employed, are entitled to disability pension. 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 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.

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."

16. The petitioners have admitted that the disability suffered by the respondent is 70% of life and has been attributed to military service. The disability having been suffered during military service, the denial of the same only on the ground of discharge upon completion of tenure is unreasonable.

17. 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., we find no error in the order passed by the Tribunal.

18. In view of the aforesaid facts and circumstances of the case, we find no reason to take a different view as taken by learned Armed Forces Tribunal, Srinagar Bench at Jammu. This petition is without any merit and is, accordingly, dismissed.