

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 757/2025

Reserved on :18.05.2026

Pronounced on:18.08.2026

Uploaded on :18.08.2026

Whether the operative part or full judgment is
pronounced: Full

No. 3998839-X Ex. Havildar Vijay Kumar
S/o Chaman Lal,
R/o Village Ismailpur Kothey,
PO Dharap, Tehsil Bishnah,
Distt. Jammu

.....Petitioner/Appellant(s)

Through:- Mr. Chakshu Sharma, Advocate
(through virtual mode)

V/s

1. Union of India, Th.
Secretary to Government of India,
Ministry of Defence, New Delhi-110001
2. The Chief of the Army Staff,
Integrated Headquarters of Ministry of Defence (Army)
Adjutant General's Branch,
Additional Directorate General Personnel Services,
DHQ, PO New Delhi 110011
3. The Principal Controller Defence Accounts (Pension) Grant
Section, Allahabad, Uttar Pradesh
4. The Record Officer- DSC Record, Kannur, Kerala
5. The Armed Forces Tribunal Srinagar Bench at Jammu, Sunjwan
Cantt-180011.

.....Respondent(s)

Through:- Mr. Vishal Sharma, DSGI with
Mr. Eishaan Dadhichi, CGSC
and Mr. Karan Sharma, CGSC

CORAM :

HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

ORDER

18.08.2026

01. Through the medium of the present petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has called in question the order dated 20.05.2024

passed by the learned Armed Forces Tribunal, Regional Bench Srinagar at Jammu (hereinafter referred to as “**the Tribunal**”) in OA No. 195/2023 titled *Vijay Kumar vs. Union of India & Ors.*, whereby the claim of the petitioner for grant of disability element along with rounding off benefits has been declined.

02. Brief facts arising out of this petition are that the petitioner was enrolled in the Indian Army on 13.10.1998 and was discharged on 31.10.2022 upon completion of his terms of engagement in the rank of Havildar after rendering more than 24 years of qualifying service. The petitioner while in service suffered from disability, namely *CAD: ACS, ST Elevation MI (Inferior Wall)*, which was assessed at 30% for life by the Release Medical Board. However, the said disability was opined to be neither attributable to nor aggravated by Military Service (NANA), and consequently, the petitioner was denied disability element though he was granted service pension.

03. Aggrieved thereof, the petitioner preferred an appeal which came to be rejected vide order dated 24.02.2023. Thereafter, the petitioner approached the learned Tribunal by filing OA No. 195/2023 seeking a direction to the respondents to grant the benefit of disability element from the date followed by discharge i.e., 01.11.2022 with the benefit of rounding off at the rate of 50% against 30%. The

said OA too came to be dismissed vide the impugned order dated 20.05.2024.

04. The claim of the petitioner for grant of benefit of disability element resisted by the respondents on the ground that the respondent has been discharged from service in low medical category P2 (permanent) on completion of terms of engagement of his service and he was granted service pension w.e.f. 01.11.2022 for life vide PPO dated 19.10.2022.

05. Learned counsel for the petitioner submits that the petitioner was medically fit at the time of his enrolment and no disability was recorded at the time of entry into service. The disease manifested during the course of service and, therefore, in terms of settled law, the same is liable to be presumed to have arisen during service. It is further contended that the Tribunal has misconstrued the settled legal position and wrongly denied the benefit of disability pension along with rounding off.

06. *Per contra*, learned counsel for the respondents submits that since the disability of the petitioner has been assessed as neither attributable to nor aggravated by Military Service, he is not entitled to disability element, and the learned Tribunal has rightly dismissed the claim of the petitioner.

07. Heard learned counsel for the parties and perused the material available on record.

08. The controversy involved in the present petition is no longer res integra. In ***Dharamvir Singh v. Union of India***, the Hon'ble Supreme Court held that where a member of the Armed Forces is found medically fit at the time of enrolment and subsequently develops a disease during service, a presumption arises that the disease is attributable to or aggravated by military service unless the employer is able to rebut such presumption by cogent and reliable evidence. The Supreme Court has further has categorically held as under:-

“29. A conjoint reading of various provisions, reproduced above, makes it clear that:

- (i) Disability pension to be granted to an individual who is invalidated 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 or aggravated by military service to be determined under “Entitlement Rules for Casualty Pensionary Awards, 1982” of Appendix-II (Regulation 173).**
- (ii) 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 r/w Rule 14(b)].**
- (iii) 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).**
- (iv) 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)].

- (v) 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. [14(b)].
- (vi) 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. [14(b)]; and
- (vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above

09. Similarly in Hon'ble Supreme Court in **Union of India and Ram Avtar & ors.** reported as **2014 SCC online SC 1761**, the Hon'ble Apex Court has held that even those individuals, who retired from service or re-employed, are entitled to disability pension. In this judgment, the Honble 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.

We do not see any error in the impugned judgment and order, therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.

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

This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us."

10. The Hon'ble Supreme Court in ***Ram Avtar's case*** (***supra***) has held that even in cases where disability is assessed between 20% to 50%, the benefit of rounding off to 50% is admissible. In view of the settled legal position, we are of the considered opinion that the learned Tribunal has erred in law in denying the benefit of disability element to the petitioner.

11. In view of the aforesaid settled legal position and having regard to the facts and circumstances of the case, we are of the considered opinion that the learned Tribunal fell into error in denying the petitioner the benefit of disability element of pension and consequential rounding off thereof.

12. Accordingly, the impugned order dated 20.05.2024 passed by the learned Armed Forces Tribunal, Regional Bench Srinagar at Jammu in OA No. 195/2023 is set aside. The petitioner shall be entitled to the disability element of

pension with the benefit of rounding off from 30% to 50%, with effect from 01.11.2022, i.e., the day immediately succeeding his discharge from service.

13. The respondents are directed to calculate and release the consequential benefits in favour of the petitioner within a period of three months from the date a copy of this judgment is made available to them.

14. The writ petition is, accordingly, allowed along with all connected applications, if any.

(SHAHZAD AZEEM)
Judge

(SINDHU SHARMA)
Judge

JAMMU
RAM MURTI/PS
18.08.2026

