

**RESERVED**  
**COURT NO.1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**ORIGINAL APPLICATION No. 225 of 2019**

**Wednesday this the 03<sup>rd</sup> day of April, 2019**

**Hon'ble Mr. Justice S.V.S.Rathore, Member (J)**

**Hon'ble Hon'ble Air Marshal B.B.P. Sinha, Member (A)**

No. JC-273599-A Nb Sub Gajadhar Prasad,  
S/o Late Dewata Din,  
R/o Vill Pure Loharan, PO Rahwan,  
Distt Raebareily (U.P.) Pin 229303.

.....Applicant

Ld. Counsel for :  
the Applicant

**Shri Pankaj Kumar Shukla,  
Advocate**

Versus

1. Union of India through the Secretary,  
Ministry of Defence, New Delhi-110011.
2. Chief of Army Staff, Integrated Headquarter,  
Ministry of Defence, South Block, New Delhi-110011.
3. Officer In-charge, Records, Signal Records,  
PIN 908770 C/0 56 APO.
4. Principal Control of Defence Account (P),  
Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the :  
Respondents

**Dr Chet Narayan Singh,  
Ld. Counsel for the Respondents.**

**ORDER**

**Delivered by Hon'ble Mr. Justice SVS Rathore, (Member-J.)**

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension. The applicant has made the following prayers:

*“(I) To issue/pass an order or directions to set aside the order dated 24.02.2011 and 06.06.2011 passed by respondents regarding Grant of Disability Element of disability pension 60% instead of 20% w.e.f. date of discharge i.e. 01.11.2004.*

*(II) To issue/pass an order or directions to the respondents to Grant of Disability element of Pension to the applicant and rounding off the disability pension from 60% to 75% instead of 20% to 50% from the date of discharge i.e. 01.11.2004.*

*(III) To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*

*(IV) Cost of the appeal be awarded to the applicant.”*

2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Army on 26<sup>th</sup> October 1978 and discharged from service on 31<sup>st</sup> October 2004 under Army Rule 13(3) Item I (a) read in conjunction with sub rule 2A, on completion of 26 years and 06 days of service. The duly constituted Release Medical Board (RMB) held on 20<sup>th</sup> July 2004 at Military Hospital, Mathura has opined as under :

(i) **CHRONIC DUODENAL ULCER OLD (Optd)**@ 20% for life as aggravated by military service

(ii) **CAD INF WALL MI SVD PTCA RCA DONE** @ 40% for life as aggravated by military service and the composite assessment for both the disabilities was 60% for Life. The disability pension claim alongwith all the relevant medical and service documents of the applicant was forwarded to the PCDA (P), Allahabad for their adjudication. The PCDA (P), Allahabad issued PPO dated 16<sup>th</sup> June 2005 to the applicant, in which the first disability i.e. (i) **CHRONIC DUODENAL ULCER OLD (Optd)** has been accepted at 20% for life, but the other disability i.e. **CAD INF WALL MI SVD PTCA RCA DONE** has been rejected by the PCDA (P), Allahabad as the

disability was considered as “neither attributable to nor aggravated by military service” (NANA) by the Medical Advisor (Pensions). The applicant filed an appeal before the competent authority which was rejected on 06.06.2011.

3. Learned counsel for the applicant submitted that since the RMB of applicant had recommended 60% composite disability for two separate disabilities, PCDA (P), Allahabad has unfairly overruled the opinion of RMB in second disability and declared it is NANA. This action of PCDA (P), Allahabad has reduced the disability of applicant from 60% to 20%. He pleaded for quashing the direction of PCDA (P), Allahabad and granting disability @ 60% rounded off to 75%.

4. While filing counter affidavit, the respondents have not disputed that the RMB has conceded composite disability to the extent of 60% for Life for two disabilities and accepted both as aggravated by military service. However, he submitted that PCDA (P) Allahabad in consultation with Medical Advisor (Pensions), while partly agreeing with opinion of RMB has accepted the first disability i.e. **CHRONIC DUODENAL ULCER OLD (Optd)** @20% for Life, but has overruled the opinion of RMB on second disability and rejected the second disability i.e. **CAD INF WALL MI SVD PTCA RCA DONE** as NANA. Learned counsel for the respondents further submitted that under the provisions of Rule 173 of Pension Regulations for the Army 1961 (Part-I), primary condition for grant of disability pension is that “Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over”. Hence in the light of the decision of PCDA (P) Allahabad on second disability i.e. **CAD INF WALL MI SVD PTCA RCA DONE**, the applicant has been correctly given disability @ 20%, he pleaded for O.A. to be dismissed.

5. We have heard learned counsel for the parties and perused the record.

6. It is observed that in the instant case, PCDA (P) Allahabad has partly overruled the opinion of the RMB and declared the disability of the applicant i.e. “**CAD INF WALL MI SVD PTCA RCA DONE**” as neither attributable to nor aggravated by military service which was opined as ‘aggravated by military service’ by Release Medical Board. The issue of sanctity of the opinion of a medical board and its overruling by a higher formation is no more Res Integra. The Hon’ble Supreme Court has made it clear that without physical medical examination of the patient, a higher formation cannot overrule the opinion of a medical board. Thus in light of the observations made by the Hon’ble Apex Court in the case of *Ex Sapper Mohinder Singh vs. Union of India & Others* in Civil Appeal No 104 of 1993 decided on 14.01.1993, we are of the considered opinion that the decision of PCDA (P) Allahabad in over ruling the opinion of RMB is void in law. The relevant part of the aforesaid judgment is quoted below:-

*“From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core.”*

Hence, we set aside the instruction of PCDA (P), Allahabad in terms of overruling the opinion of RMB on **CAD INF WALL MI SVD PTCA RCA DONE**. However, we are of the considered view that considering all

issues, ends of justice will be met if respondents hold another RSMB to finally decide the issue of attributability and percentage of second disability i.e. **CAD INF WALL MI SVD PTCA RCA DONE** on the ground that the earlier opinion had been given by PCDA (P), Allahabad without physical medical examination and holding of another Medical Board.

7. Considering the third prayer of the applicant, we are of the considered opinion that the benefit of rounding off can be extended to the applicant in the light of the law settled by the Hon'ble Apex Court on this matter in **Union of India and Ors v Ram Avtar & ors** (Civil Appeal No 418 of 2012) decided on 10<sup>th</sup> December 2014) and the existing disability element can be granted the benefit of rounding off from 20% for life to 50% for life.

8. Accordingly the O.A. is **partly allowed**. The respondents are directed to extend the benefit of rounding off from 20% for life to 50% for life from three years before filing this O.A., if the benefit of rounding off has not yet been extended. The date of filing this O.A. is 30.05.2018. Additionally the respondents are also directed to conduct RSMB of the applicant which will decide the attributability and percentage, including composite percentage of second disability i.e. **CAD INF WALL MI SVD PTCA RCA DONE**. Enhancement in disability element will be subject to the outcome of the RSMB. 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. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

9. No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice SVS Rathore)**  
**Member (J)**

Dated: April, 2019  
PKG