

**Court No. 1**

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

**ORIGINAL APPLICATION No. 632 of 2024**

Thursday, this the 03<sup>rd</sup> day of April, 2025

**“Hon’ble Mr. Justice Anil Kumar, Member (J)**  
**Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. JC-704967M Ex. Sub. Indrajit Singh Narbaria S/o Nathoo Singh Narbaria, R/o Gali No. 4, Sector – B, Vijay Nagar, Neelmatha, Lucknow, U.P.-226002.

**..... Applicant**

Ld. Counsel for the : **Shri Shiv Kumar Saroj**, Advocate  
 Applicant

Versus

1. The Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ of MOD (Army), South Block, New Delhi.
3. Additional Directorate General, ADG PS-4, IHQ of MoD (Army), DHQ PO, New Delhi-110011.
4. Officer-in-Charge, AMC Records, Lucknow-226002.
5. The PCDA (Pension), Draupadi Ghat, Allahabad (Prayagraj).

**.....Respondents**

Ld. Counsel for the : **Shri Jai Narayan Mishra**, Advocate  
 Respondents. Central Govt. Standing Counsel

## **ORDER**

**“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”**

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

- A. *To issue/pass an order or directions set-aside/quash the letter/order no. JC704967M/REJ/DPI Dated 22 May 2023, which is annexed as Annexure No. A-1 to this Original Application.*
- B. *To issue/pass an order or directions to the respondents to grant disability element of disability pension @30% to the applicant from the date of discharge i.e. 30.04.2023 along with 12% interest on arrears in light of Hon’ble Apex Court judgments.*
- C. *To issue/pass an order or directions to the respondents to Grant benefit of rounding off/broad banding off disability element of disability pension @30% to @50% to the applicant from date of discharge i.e. 30.04.2023 along with 12% interest on arrear in light of Hon’ble Apex Court judgment and Government letter dated 31.01.2001.*
- D. *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.*
- E. *To allow this original application with costs.*

2. Briefly stated, applicant was enrolled in the Army Medical Corps of Indian Army on 28.04.1995 and discharged on 30.04.2023 in Low Medical Category on fulfilling the conditions of

his enrolment under Rule 13 (3) Item I (i) (a) of the Army Rules, 1954 after rendering 28 years and 03 days of service. The applicant is in receipt of Service Pension. Before discharge from service, the Release Medical Board (RMB) held at Base Hospital, Lucknow C/o 56 APO on 03.04.2023 assessed his disability '**PRIMARY HYPERTENSION (I-10)**' @30% for life and opined the disability to be **aggravated** by service. However, the applicant's claim for grant of disability element of disability pension was rejected by the competent authority i.e. Officer-in-Charge, Army Medical Corps Record Office vide letter dated 22.05.2023. The applicant preferred First Appeal dated 06.11.2023 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant submitted that the applicant's disability was found to be **aggravated by** military service vide RMB which had also assessed the disability @30% for life. The applicant's disability was first detected while he was serving in Field Area as per Para 43 of Chapter VI of Guide to Medical Officers (Military Pension), 2008. He further pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. Ld. Counsel for the applicant further submitted that competent authority i.e. Officer-in-Charge, Army Medical

Corps Record Office has no authority to overrule the opinion of RMB. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to 50%.

4. Ld. Counsel for the respondents conceded that disability of the applicant @30% for life has been regarded as **aggravated by** the RMB, but the competent authority i.e. Officer-in-Charge, Army Medical Corps Record Office has rejected the claim of the applicant in the light of relevant rules, existing medical/administrative provisions on the subject and opined the disability as neither attributable to nor aggravated by military service (NANA) as the applicant was overweight – BMI 25.42, hence in terms of Regulation 53(a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that *“An individual released/retired/discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20% or more”* the applicant is not entitled to disability element of disability pension. Ld. Counsel for the applicant further

submitted that Para 5 of Entitlement Rules for Casualty Pensionary Awards in Armed Forces Personnel, 2008 stipulates that *“The medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore, it may not detect some dormant disease. Besides certain hereditary constitutional and congenital diseases may manifest later in life, irrespective of service conditions. The mere fact that a disease has manifested during military serviced does not per se establish attributability to or aggravation by military service.”* He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the records and we find that the questions which need to be answered are two folds:-

- (a) Whether the competent authority i.e. Officer-in-Charge, Army Medical Corps Record Office has authority to overrule the opinion of RMB?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. This is a case where the disability of the applicant has been held as aggravated by military service by the RMB. The RMB assessed the disability @30% for life. However, the opinion of the RMB has been overruled by the competent authority i.e. Officer-in-

Charge, Army Medical Corps Record Office and the disability has been regarded as neither attributable to or aggravated by military service.

7. The issue of sanctity of the opinion of a Release Medical Board and its overruling by a higher formation is no more Res Integra. The Hon'ble Supreme Court in the case of ***Ex. Sapper Mohinder Singh vs. Union of India & Others***, in Civil Appeal No.164 of 1993, decided on 14.01.1993, has made it clear that without physical medical examination of a 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***, we are of the considered opinion that the decision of competent authority i.e. Officer-in-Charge, Army Medical Corps Record Office over ruling the opinion of RMB held on 03.04.2023 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.”*

8. Thus in light of the aforesaid judgment (supra) as well as IHQ of MoD (Army) letter dated 25.04.2011 it is clear that the disability assessed by RMB cannot be reduced/overruled by competent authority i.e. Officer-in-Charge, Army Medical Corps Record Office, hence the decision of competent authority i.e. Officer-in-Charge, Army Medical Corps Record Office is void. Hence, we are of the opinion that the disability of the applicant should be considered as aggravated by military service as has been opined by the RMB.

9. The law on the point of rounding off of disability 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 10<sup>th</sup> 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 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.”*

10. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017/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.

11. 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 (supra)*** as well as Government of India, Ministry of Defence letter No.17(01)/2017/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @30% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge.

12. In view of the above, the **Original Application No. 632 of 2024** 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 disability of the applicant is held as aggravated by Army Service has been opined by the RMB. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life from the next date of his 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.

13. No order as to costs.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated : 03 April, 2025

AKD/-