

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)**

ORIGINAL APPLICATION No. 161 of 2021

Tuesday, this the 3rd day of August, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 5341978X Ex. Nk. Prem Bahadur, S/o Jang Bahadur, R/o
Village New Basti Sunderwala, P.O. Rajpur, District Dehradun,
Uttarakhand.

..... Applicant

Ld. Counsel for the : **Shri Kishore Rai**, Advocate
Applicant

Versus

1. Union of India, Ministry of Defence through its Secretary,
South Block, New Delhi-110011.
2. P.C.D.A. (P), Allahabad, Uttar Pradesh.
3. Senior Record Officer, records, The Garhwal Rifles, PIN-
900295, C/o 56 APO.

.....**Respondents**

Ld. Counsel for the : **Ms. Pushpa Bhatt**,
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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

- i. A direction to quash the order dated 27.02.2008 passed by respondent no. 1 (contained as Annexure No. 3 to this original application) or to*
- ii. A direction to grant the disability pension to the applicant from the date of his retirement i.e. 31.01.1996 along with rounding off to the tune of 50%.*
- iii. To summon the entire records of the applicant pertaining to computation of his disability pension.*
- iv. Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.*

2. Briefly stated facts of the case are that applicant was enrolled in the 4th Gorkha Rifles of Indian Army on 30.09.1974 and was discharged on 01.10.1996 in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III(i) of the Army Rules, 1954. At the time of retirement from service, the Release Medical Board (RMB) held on 09.07.1996 and assessed his disability '**GOUTY ARTHRITIS**' @40% for two years and opined the disability to be aggravated by military service due to stress and strain of military service. The disability claim of the applicant was rejected by the Medical Advisor (Pension), Principal Controller of Defence Account (Pensions), Allahabad vide letter dated 07.02.1997 on the ground that the disability of the applicant is neither attributable to nor aggravated by military service and constitutional in nature and not related to service. The applicant preferred First Appeal which too was rejected by the respondents vide letter dated 17.07.2001. The applicant preferred again representation which too was rejected vide letter dated 27.02.2008.

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 dated 09.07.1996 and has assessed the disability @ 40% for two years. 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. The disease of the applicant was contracted during the service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. Ld. Counsel for the respondents conceded that disability of the applicant @40% for two years has been regarded as aggravated by the RMB, but Medical Advisor (Pension), Principal Controller of Defence Accounts (Pensions), Allahabad has rejected the claim of the applicant on the ground that the disability of the applicant is neither attributable to nor aggravated by military service, hence applicant is not entitled to disability pension. 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 Release Medical Board proceedings as well the records. The questions which needs to be answered are of two fold :-

(a) Whether the Medical Advisor (Pension), Principal Controller of Defence Accounts (Pensions), Allahabad 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 which was held on 09.07.1996. The RMB assessed the disability @40% for two years. However, the opinion of the RMB held on 09.07.1996 has been overruled by the Medical Advisor (Pension), Principal Controller of Defence Accounts (Pensions), Allahabad and the disability has been regarded as neither attributable to or aggravated by military service being onset in November, 1995 in peace station (Kolkata) and not related to 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 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*** in Civil Appeal No 164 of 1993, decided on 14.01.1993, we are of the considered opinion that the decision of competent authority i.e. Medical Advisor (Pension), Principal Controller of Defence Accounts (Pensions), Allahabad over ruling the opinion of RMB held on 09.07.1996 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 it is clear that the disability assessed by RMB on 09.07.1996 cannot be reduced/overruled by the Medical Advisor (Pension), Principal Controller of Defence Accounts (Pension), Allahabad and hence the decision of Medical Advisor (Pension), Principal Controller of

Defence Accounts (Pensions), Allahabad 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 dated 09.07.1996.

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 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 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. 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)***, we are of the considered view that benefit of rounding off of disability pension @ 40% for two years to be rounded off to 50% for two years may be extended to the applicant from the date of his discharge.

11. Since the applicant's RMB was valid for two years w.e.f. 01.10.1996, hence, the respondents will now have to conduct a fresh Re-Survey Medical Board for him to decide his future eligibility to disability element of disability pension.

12. In view of the above, the **Original Application No. 161 of 2021** deserves to be allowed, hence, **allowed**. The impugned orders dated 07.02.1997, 17.07.2001 and 27.02.2008, rejecting the applicant's claim for grant of disability pension, are set aside. The

disability of the applicant is held as aggravated by military service as has been opined by the RMB dated 09.07.1996. The applicant is entitled to get disability element of disability pension @40% for two years which would be rounded off to 50% from the date of his discharge. The respondents are directed to grant disability element of disability pension to the applicant @40% for two years which would stand rounded off to 50% for two years from the date of discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element of disability pension. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 03 August, 2021

AKD/-