

RESERVED
Court No.1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(Circuit Bench at Nainital)**

Original Application No. 399 of 2019

Thursday, this the 03rd day of December 2020

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 4165234 Ex Sep Himmat Singh, S/O Kishan Singh,
R/o Village – Tigri, Bhudai, PO- Khatima, Distt – Udham
Singh Nagar, Uttarakhand - 262308

..... 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 - 110001.
2. P.C.D.A. (P) Allahabad, Uttar Pradesh.
3. Chief of the Army Staff, Integrated headquarters of
Ministry of Defence, South Block, New Delhi – 110001.
4. Senior Record Officer, Records The Kumaun Regiment,
PIN – 900473, C/o 56 APO.

..... Respondents

Ld. Counsel for the
Respondents

: **Ms. Pushpa Bhatt,**
Central Govt Counsel.

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

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

(i) A direction to quash the order dated 30.11.2017 passed by respondent no. 4 (contained as Annexure No. 5 to this original application) or to

(ii) A direction to grant the disability pension to the applicant from 23.02.1999 alongwith rounding of 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. The undisputed factual matrix on record is that the applicant was enrolled in the army on 27.09.1972 and was discharged from service on 09.07.1983 under Army Rule 1954, 13, 2 (a) for the disability “LOW BACK ACHE V-67” with 30% and considered as attributable to and aggravated by the military service for different spells for which disability pension was granted to him till 22.02.1999. Last Re-survey Medical Board of the applicant was held on 22.08.2003 at Military Hospital

Baerilly, and the Medical Board assessed the disability between 11-14% for life. Subsequently, claim of the applicant for the grant of disability pension was rejected by the respondents vide letter dated 30.11.2017 and 03.02.2018 respectively being less than 20%. Being aggrieved, the applicant has approached this Tribunal for the grant of disability pension. The delay in filing Original Application has already been condoned by this Tribunal by order dated 01.08.2019.

3. Ld. Counsel for the applicant submitted that since the applicant was suffering from disability "LOW BACK ACHE V-67" while performing military duty and the same has been opined to be attributable to and aggravated by the military service, therefore, applicant is entitled to disability pension. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant is also entitled to disability pension and its rounding off to 50%. Ld. Counsel for the applicant further submitted that claim for the grant of disability pension was wrongly rejected vide order dated 30.11.2017 and 03.02.2018 on the ground of disability percentage being less than 20%. Ld. Counsel for the applicant has relied upon the judgment of the Hon'ble Apex

Court in the case of **Sukhvinder Singh vs Union of India & Ors**, Civil Appeal No. 5604 of 2010, decided on 25.06.2014 and pleaded that the applicant is entitled to grant of disability pension and its rounding off.

4. Rebutting arguments of Ld. Counsel for the applicant, Ld. Counsel for the respondents submitted that the disability pension claim of the applicant was rightly rejected because though the Medical Board had conceded aggravation but it had assessed the degree of disablement between 11 to 14% for life which is less than the minimum requirement of 20% for the grant of disability pension, therefore, the disability pension is inadmissible to the applicant.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. 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 the 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."*

7. It is clear that the higher competent authority i.e. PCDA (Pension), Allahabad has not physically examined the applicant. The Hon'ble Apex Court has made it very clear that the opinion of the Medical Board cannot be overruled by higher chain of command without physical medical examination of the patient. In this context the operative portion of the judgment of Hon'ble Apex Court in the case of **Ex. Sapper Mohinder Singh vs. Union of India** in Civil Appeal No 104 of 1993 decided on 14.01.1993 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. In the instant case, there is no dispute that the applicant's disability has been assessed as 11-14% for life and has been conceded as aggravated by the military service. The Adviser at P.C.D.A. has no right to sit over the decision of the Medical Board. This fact has also been accepted by the respondents. Thus in view of the law settled by the Hon'ble Apex Court on this matter, we are of the considered opinion that the applicant is entitled for the benefit of rounding off in terms of Government letter dated 31.01.2001 and the disability element of the pension @ 11-14% for life shall stand rounded off to 50% for life from the date of discharge.

9. In view of the above, the Original Application No. 399 of 2019 deserves to be allowed, hence **allowed**. The impugned order dated 30.11.2017, enclosed as Annexure No. 5 of Original Application, is set aside. The respondents are directed to grant disability element of the pension @ 11-14% for life to the applicant, which shall stand rounded off to 50% for life from three years prior to filing of Original Application. The Original Application was filed on 15.07.2019. The entire exercise shall be completed by the respondents within four months from the date of production of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 9%

to the applicant on the amount accrued till the date of actual payment.

10. No order as to costs.

(Vice Admiral Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : December 2020

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