

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 700 of 2017

Monday, this the 18th day of February, 2019

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

No. 14556639N Ex Hav Raj Bhan Singh S/o Sri Kanaiya Lal Singh,
R/o H. No. 591-IYA/666, Baldev Vihar, Telibagh Kharika, Lucknow
(U.P.) Pin-226029.

..... Applicant

Ld. Counsel for the : **Shri Parijaat Belaura**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Additional Directorate General of Personnel Services, Adjutant Generals Branch (AS/PS-4/Imp-II) Integrated Head Quarter, Ministry of Defence, South Block, New Delhi.
3. Officer-in-Charge, EME Records, PIN-900453, C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahaabd (UP).

.....**Respondents**

Ld. Counsel for the : **Shri V.P.S. Vats**,
Respondents. Central Govt. Counsel

ORDER**“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”**

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

- (I) To grant disability @30% which has been assessed to be aggravated by service & round off the same to 50% as per GOI, MoD letter 31.01.2001.*
- (II) To pay arrear of difference of disability pension along with 12% interest from the date of his invalided of 31.01.2001.*
- (III) Any other suitable relief this Hon’ble Court deems fit and proper may also be granted.*

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Army on 08.07.1983 in the Corps of Electronics and Mechanical Engineers (EME) and was discharged on 31.01.2001 in Low Medical Category P2 (P) under Rule 13(3) III (v) of the Army Rules, 1954. The Release Medical Board (RMB) held at Base Hospital, Lucknow on 13.11.2000 assessed his disability (1) **‘OBESITY (278)’** @ Nil percentage and **(2) PRIMARY HYPERTENSION (401)’** @30% for two years. The disease No. 1 was assessed to be Neither Attributable to Nor Aggravated (NANA) by military service and it was not connected to service but disease No.2 was found to be aggravated due to stress and strain of military service. The applicant preferred Appeal dated 07.02.2017 but the

respondents have not replied. It is in this perspective that the applicant has preferred the present Original Application.

3. The delay in filing the Original Application has been condoned vide order dated 18.12.2017 passed by this Tribunal.

4. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of his initial enrolment. Disease of the applicant was first started in the year 1998, i.e. fifteen years after enrolment; hence it is attributable to Military Service. In nutshell, submission of learned counsel for the applicant was that since the RMB had assessed applicant's second disease i.e. 'PRIMARY HYPERTENSION' as 30% and aggravated by Military Service, he was entitled to disability pension. The act of overruling the recommendations of RMB by higher competent authority was wrong and should be set aside. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension and its rounding off to 50%.

5. On the other hand, Ld. Counsel for the respondents contended that disability No.1 of the applicant has been regarded as NANA by the RMB and not connected to service and assessed the same at NIL percentage and disability No. 2 has been assessed as aggravated due to stress and strain of military service and assessed the same @30% for two years. However, the composite assessment of both the disabilities was assessed at 30% for two years. He further pleaded

that since the Medical Advisor (P) attached to PCDA (P), Allahabad on 27.09.2001 has opined both the disabilities to be NANA hence being a higher formation the opinion of PCDA (P) will prevail. He pleaded for dismissal of the O.A.

6. 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. The one point question which needs to be answered is as follows:-

- (a) Whether the second disability i.e. Primary Hypertension (401) is aggravated by military service as per opinion of RMB or it is NANA as per opinion of Medical Advisor attached to PCDA (P)?

7. The law on the supremacy of the opinion of a Medical Board is no more RES INTEGRA. It is clear that Medical Advisor at PCDA (Pension), Allahabad has rejected the claim of disability pension of the applicant without carrying out any physical examination of the applicant. The Hon'ble Apex Court has made it very clear that the opinion of the Medical Board cannot be overruled by a 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. Thus in light of this judgment it is clear that the opinion of RMB will prevail over the opinion of PCDA (P). Therefore we set aside the decision of PCDA (P), Allahabad to declare the second disability Primary Hypertension (401) as NANA and are of the considered opinion that the applicant was entitled to disability pension @30% for two years w.e.f. 01.02.2001.

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 invalidated 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. In the instant case, there is no dispute that the applicant's disability No. 2 has been assessed as 30% for two years and has been conceded as aggravated by military service. 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 and in the interest of substantive justice, 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 @30% for two years shall stand rounded off to 50% for two from the date of discharge.

11. In view of the above, the Original Application No.700 of 2017 deserves to be partly allowed, hence, **partly allowed**. The order dated 27.09.2001 passed by the Medical Advisor (P) attached to PCDA (P), Allahabad, enclosed as Annexure No. CA-3 of the Counter Affidavit, is set aside. The respondents are directed to grant disability element of the pension @30% for two years, which shall stand rounded off to 50% for two years, from the date of discharge of the applicant i.e. 01.02.2001. The respondents are further directed to refer the applicant's case to Review Medical Board for reassessing the medical condition of the applicant for further entitlement of disability pension, if any. Respondents are 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 @ 9% per annum till the date of actual payment.

No order as to costs.

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: February, 2019

AKD/UKT/-