

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No.744 of 2022**Wednesday, this the 15<sup>th</sup> day of February, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**  
**“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**IC -48262N Col. (Retd). Arun Suryavanshy,  
S/o Shri Sudarshan Singh,  
R/o House No. D-22, Arjun Enclave, Arjunganj,  
District – Lucknow (U.P) -226002**..... Applicant**Ld. Counsel for the : **Shri Ved Prakash Pandey**, Advocate  
Applicant **Shri Rakesh Kumar Singh**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi -110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi -110011.
3. Additional Directorate General Manpower ORO/MP-7/Adjudication HQ Cell, Adjutant General’s Branch, Integrated HQ of MoD (Army), West Block – III, R.K. Puram, New Delhi -110066.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj -211014.

**.....Respondents**Ld. Counsel for the : **Shri Ashish Kumar Singh**, Advocate  
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 :-

(a) *To issue/pass an order or direction to the Respondents to quash/set aside the impugned order dated 27.05.2022 vide which the disability element claim of the applicant was rejected.*

- (b) *To issue/pass an order or direction to the Respondents to grant disability element @55% for life which after rounding off will be @75% for life from the next date of retirement i.e. from 01 June 2021.*
- (c) *Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.*
- (d) *Cost of the Original Application be awarded to the applicant.*

2. Briefly stated, applicant was commissioned in the Indian Army on 17.12.1988 and retired from service on 31.05.2021 on superannuation in Low Medical Category. At the time of retirement from service, the Release Medical Board (RMB) held at Base Hospital Lucknow on 03.02.2021 assessed his disabilities (i) 'PRIMARY HYPERTENSION' @ 30% (ii) 'OBESITY' @ 5%, (iii) 'OSTEOARTHRITIS BOTH KNEES' @ 30% and (iv) 'DYSLIPIDEMIA' @ 5%, composite disabilities @ 55% for life and opined the disabilities first and third as aggravated by service and second and fourth to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability element of disability pension was rejected vide letter dated 27.05.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of commissioning, 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 commissioning in Army. The diseases of the applicant were contracted during the service, hence they are attributable to and aggravated by Military Service. He placed reliance on the judgment of the Hon'ble Apex Court in **Dharamvir Singh**

**vs. Union of India & Others**, (2013) 7 SCC 316 and pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension and its rounding off to 75% for life.

4. No counter affidavit is filed in the matter. However, on the basis of rejection letter dated 27.05.2022, Ld. Counsel for the respondents submitted that applicant did not fulfil the eligibility conditions as laid down in existing rules/provision for the grant of disability element and the claim for the same is not approved by the competent authority. 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 of three folds:-

- (a) Whether the Principal Controller of Defence Accounts (Pensions), Allahabad has authority to overrule the opinion of RMB for disability No. 1 and 3 which is aggravated by service?
- (b) Whether the disability No. 4 of the applicant is attributable to or aggravated by Military Service?
- (c) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. This is a case where the disabilities No. 1 (PRIMARY HYPERTENSION) and 3 (OSTEOARTHRITIS BOTH KNEES) of the

applicant have been assessed @ 30% for life each and held as aggravated by military service by the RMB. The RMB assessed both the disabilities @ 30% each for life. However, the opinion of the RMB has been overruled by Principal Controller of Defence Accounts (Pensions), Allahabad/ higher authorities and disability pension has been denied to the applicant.

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 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.”*

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 Principal Controller of Defence Accounts (Pension), Allahabad/higher authorities, hence, we are of the opinion that the disability No. 1 and 3 of the applicant should be considered as aggravated by military service as has been opined by the RMB.

9. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. In view of the settled position of law on attributability, we find that the RMB has denied attributability to disability No. 4 without any specific/valid reason. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh*** (supra), and the disability No. 4 (DYSLIPIDEMIA) of the applicant should be considered as aggravated by military service.

10. As far as second disability (Obesity) of the applicant is concerned, we are in agreement with the opinion of RMB that obesity is caused due to personal dietary habits and not related to military service, hence, second disability of the applicant is treated as NANA.

11. In para 17 A (a) of Chapter VII of the Guide to Medical Officer (Military Pensions), 2002 the provision for composite assessment has been mentioned which reads as under :-

**“17A. Composite Assessment**

*(a) Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment will be the arithmetical sum of their separate assessment. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping. There is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases. This is not correct.”*

12. In view of above, since in the instant case first and third disabilities have entirely different functional effects with second disability, hence the composite assessment is to be the arithmetical sum of their separate assessment. Accordingly, we reduce the total by 5% and we hold that composite assessment of first, third and fourth disabilities is @ 50% for life.

13. 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> January 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.”

14. As such, in view of the decision of Hon'ble Supreme Court in the case of **Ram Avtar** (supra), we are of the considered view that benefit of rounding off of disability pension @ 50% for life to be rounded off to 75% for life may be extended to the applicant from the next date of his retirement.

15. In view of the above, the **Original Application No. 744 of 2022** 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 disabilities No. 1, 3 & 4 of the applicant are aggravated by Army Service. The applicant is entitled to get disability element @50% for life which would be rounded off to 50% for life from the next date of his retirement from service. The respondents are directed to grant disability element to the applicant @ 50% for life duly rounded off to 75% for life from the next date of his retirement from service. 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.

16. No order as to costs.

17. Pending Misc. Application(s), if any, shall stand disposed off.

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

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated : 15<sup>th</sup> February 2023  
SB/Ashok