

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 646 of 2022**Wednesday, this the 8<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)”**

JC-51663N Lt. Col. Krishna Murari (Retd.), S/o Late Ram Singhasan Rai, R/o Vivek Puram, Near Satyam Provision Store, Taramandal Road, Bharwalia Bujurg, Post – Siddharth Enclave, District – Gorakhpur (U.P.)-273017.

**..... Applicant**

Ld. Counsel for the : **Shri Vijay Kumar Pandey**, Advocate  
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi-110011.
2. Addl. Directorate General Manpower [Policy & Planning/MP-5(b)] Adjutant General’s branch, Integrated HQ of MoD (Army), Wing No. 3, ground Floor, West Block-III, R.K. Puram, New Delhi-110066.
3. Dy. Director, Addl. Directorate General Manpower (Policy & Planning/MP-6(d), Adjutant General’s branch, Army Headquarters, West Block-III, R.K. Puram, New Delhi-110066 (Record Office).
4. CDA (Officer), Golibal Maidan, Pune-411001.
5. PCDA (P), Draupadi Ghat, Allahabad (U.P.)-211014.

**.....Respondents**

Ld. Counsel for the : **Shri Rajiv Pandey**, 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 :-

- (i) *That this Hon’ble Tribunal may kindly be pleased to set aside the impugned rejection order of disability pension, if any, and grant the disability pension @30% rounded off 50% for life to the applicant w.e.f. 17.04.2007, to actual date of payment and also onwards, and provide the interest on the aforesaid delayed amount of disability pension with 18% p.a. since due date to actual date of payment in the interest of justice.*
- (ii) *That this Hon’ble Tribunal may kindly be awarded the cost Rs.20,00,000/- (Rupees Twenty Lac only) to the applicant against the opposite parties.*
- (iii) *That this Hon’ble Tribunal may be pleased to pass any other order or direction which this Hon’ble Court may deem just and proper be passed in favour of the applicant.*

2. Briefly stated, applicant was initially commissioned in the Indian Army 04.06.1982 and prematurely retired on 16.11.2007 (AN) at his own request in Low Medical Category. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Golconda on 14.04.2007 assessed his disabilities (i) **‘CERVICAL SPONDYLOSIS’ @20% for life as aggravated by military service** and (ii) **‘LOW BACKACHE’ @20% for life as**

**attributable to military service, composite disabilities @30% for life.** The disability claim of the applicant was however not processed as he had prematurely retired at his own request. The applicant preferred Petition dated 10.09.2021 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 and attributable to military service respectively vide RMB which had also assessed the composite disabilities @30% for life. He further submitted that despite the opinion of the RMB the respondents have not processed the applicant's claim for the grant of disability element of disability element on the ground that he was prematurely retired at his own request. 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 composite disabilities of the applicant @30% for life have been regarded as **aggravated by and attributable to military service respectively** the RMB, but since the applicant was prematurely retired at his own request the applicant's claim for the grant of disability element of disability pension has not been processed by the respondents. 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?
- (b) Whether the applicant is entitled to disability pension being a case of discharge on his own request?
- (c) 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 @20% for two years. However, the opinion of the RMB has been overruled by the competent authority and the applicant's claim for the grant of disability element of disability pension has not been processed by the respondents.

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 ruling the opinion of RMB held on 14.04.2007 by not processing the applicant's claim for the grant of disability element of disability 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 the Competent Authority/Principal Controller of Defence Accounts (Pension), Allahabad, hence the decision of competent authority is void. Hence, we are of the opinion that the disabilities of the applicant

should be considered as aggravated by and attributable to military service respectively as has been opined by the RMB.

9 Government of India, Ministry of Defence letter No. 16(5)/2008/D(Pen/Policy) dated 29.09.2009 stipulates that *“In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntarily or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity.”* In view of aforesaid letter, the applicant is entitled for grant of disability element of disability pension even if he has been discharged on his own request on compassionate grounds.

10. 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.”*

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

12. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

*“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”*

13. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)** as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/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 three preceding years from the date of filing of the Original Application.

14. In view of the above, the **Original Application No. 646 of 2022** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. Both the disability of the applicant is held as aggravated by and attributable to Military Service respectively as have 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 w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 04.08.2022. 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.

15. No order as to costs.

(Vice Admiral Atul Kumar Jain)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 08 February, 2023

AKD/-