

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 681 of 2022

Friday, this the 03rd day of February, 2023

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Ashok Kumar Nishad (No. 10182273Y), S/o Shri Mahgu Lal r/o Village – Chhatnag, Jhunsi, Dhoolpur, PS Sarai Inayat, Prayagraj.

..... **Applicant**

Ld. Counsel for the Applicant : **Shri Dhruv Mishra**, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, Government of India, New Delhi.
2. Concerned Officer, PCDA (P), Allahabad.
3. Secretary, Ministry of Defence, Government of India.
4. Lt. Colonel, Senior Records Officer, Records the Kumaon Regiment.

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri Adesh Kumar Gupta**, Advocate
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. The Hon’ble Tribunal may graciously be pleased to direct the respondents/concerned authorities to

release the applicants disability pension with effect from the dated he got expelled i.e. 20.12.1997 and set aside the order dated 20.06.2001 passed by the respondent no. 3 in appeal as well as rejection order by the respondents with regard to the disability pension.

II. Any other suitable order or direction which is necessary to meet the ends of justice may also be passed by this Hon'ble Tribunal in favour of applicant.

2. Briefly stated, applicant was enrolled in the Kumaon Regiment of Territorial Army on 05.10.1991 and invalided out from service on 20.12.1997 in Low Medical Category under Rule 14(b) (iv) of Territorial Army Rules. At the time of discharge from service, the Invaliding Medical Board (IMB) held at Military Hospital, Allahabad on 21.10.1997 assessed his disability '**POLYARTHROSIS (NON SPECIFIC)**' @20% for two years and opined the disability to be **Aggravated by** military service. The disability claim of the applicant was however rejected by the Principal Controller of Defence Account (Pensions), Allahabad vide letter dated 18.02.1999 on the ground that the disability of the applicant was not attributable to military service but does not fulfil the following conditions, namely it existed before and has remained aggravated thereby nor aggravated by military service which was communicated to the applicant vide letter dated 11.03.1999. The applicant preferred First Appeal dated 31.10.2000 which too was

rejected vide letters dated 20.06.2001. 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 IMB which had also assessed the disability @20% for two years. He further submitted that Principal Controller of Defence Accounts (Pension), Allahabad has no authority to overrule the opinion of IMB. He 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 50%.

4. Ld. Counsel for the respondents conceded that disability of the applicant @20% for two years has been regarded as **aggravated by** the IMB, but pension sanctioning authority i.e. Principal Controller of Defence Accounts (Pensions), Allahabad has rejected the claim of the applicant on the ground that the disability of the applicant is not attributable to military service and applicant does not fulfil the conditions namely it existed before and has remained aggravated thereby, 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 records and we find that the questions which need to be answered are of two folds:-

- (a) Whether the Principal Controller of Defence Accounts (Pensions), Allahabad has authority to overrule the opinion of IMB?
- (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 IMB. The IMB assessed the disability @20% for two years. However, the opinion of the IMB has been overruled by Principal Controller of Defence Accounts (Pensions), Allahabad and the disability has been regarded as neither attributable to or aggravated by military 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 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 i.e. Principal Controller of Defence Accounts (Pensions), Allahabad over ruling the opinion of IMB held on

21.10.1997 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 IMB cannot be reduced/overruled by Principal Controller of Defence Accounts (Pension), Allahabad, hence the decision of 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 IMB.

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. 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.

11. 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)*** 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 pension @20% for two years to be rounded off to 50% for two years may be extended to the applicant from the next date of his invalidation.

12. Since the applicant's IMB was valid for two years w.e.f. 20.12.1997, hence, the respondents will now have to conduct a fresh Re-Survey Medical Board for him to decide his future eligibility to disability pension.

13. In view of the above, the **Original Application No. 681 of 2022** deserves to be allowed, hence, **allowed**. The impugned orders, rejecting the applicant's claim for the 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 IMB. The applicant is entitled to get disability pension @20% for two years to be rounded off to 50% for two years from the next date of his invalidation. Respondents are directed to grant disability pension to the applicant @20% for two years to be rounded off to 50% for two years from the next date of invalidation. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement 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.

14. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 03 February, 2023

AKD/-