

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 911 of 2022**Thursday, this the 16th day of February, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 4163234M, Nk Madhan Ram (Retd),
S/o Mohan Ram,
Village and Post- Simkuna,
Tehsil- Kanda, District – Bageshwar
(Uttarakhand) Pin- 263631.

..... Applicant

Ld. Counsel for the: **Shri Raj Kumar Mishra**, Advocate
Applicant **Ms. Upsana Mishra**, Advocate
Lt. Col. Nidhikant Dhyani (Retd.), Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, South Block, New Delhi.
3. The Senior Records Officer, Kumaon Records, Ranikhet (Uttarakhand), Pin-263645.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad -211014 (U.P).

.....**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 :-

- “8.1 to issue order and directions to grant of benefits of disability element to the applicant from September 1989 onwards for the disease PERCEPTIVE DEAFNESS BILATERAL assessed permanent disablement 20% sustained and aggravated to the applicant.*
- 8.2 to quash the impugned orders bearing No. 4163234/DP/NE&PG dated 19 Feb 2022, annexed as Annexure A1.*
- 8.3 issue and order or direction to the respondents to release the arrears and consequential benefits arise out of disability elements to the applicant with 18% interest with effect from September 1989.*
- 8.4 any other relief which the Hon’ble Court may deem fit and proper in the circumstances of the case.*
- 8.5 to award the cost of this petition to the applicant.”*

2. Briefly stated, applicant was initially enrolled in the Indian Army 09.07.1971 and discharged on 10.12.1989 (AN) on completion of terms of engagement in Low Medical Category. At the time of discharge from service, the Release Medical Board (RMB) held at 150 General Hospital on 25.10.1989 assessed his disability ‘PERCEPTIVE DEAFNESS BILATERAL (389)’ @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 22.05.1990 on the ground that the disability of the applicant was neither attributable to nor aggravated by military service and constitutional in nature which was communicated to the applicant vide letter dated 23.06.1990. 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 attributable to military service vide RMB which had also assessed the disability @20% for two years as aggravated by military service. He further pleaded that at the time of enrolment, 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 enrolment in Army. The disease of the applicant was contracted during the service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, as such the applicant is entitled to disability pension @ 20%.

4. Ld. Counsel for the respondents conceded that disability of the applicant @ 20% for two years has been regarded as aggravated by the RMB, 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 neither attributable to nor aggravated by military service, hence, under the provisions of para 173 of Pension Regulations for the Army, 1961 (Part-1), 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 and perused the record.

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 Principal Controller of Defence Accounts (Pensions), Allahabad and the disability has been regarded as neither attributable to nor 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 RMB held on 27.01.1999 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, 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 RMB and applicant is held entitled for 20% disability element for two years from the date of discharge from service.

9. As for as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding for period in question being discharged from service prior to date of its applicability.

10. Since the applicant's RMB was valid for two years w.e.f. 11.12.1989, hence, the respondents will now have to conduct a

fresh Re-Survey Medical Board for him to decide his future eligibility to disability element of disability pension.

11. In view of the above, the **Original Application No. 911 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 applicant is entitled to get disability element @20% for two years from the next date of his discharge from service. The respondents are directed to grant disability element to the applicant @ 20% for two years from the next date of his discharge from service. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element of disability pension. The respondents are 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 actual payment.

12. No order as to costs.

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

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 16th February, 2023
SB/Ashok