

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 329 of 2019**Monday, this the 04th day of January, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 14533356, Ex. Sep. Vijay Kumar Singh, son of Ram Kripal Singh, resident of Village & Post Office – Kotwa, Tehsil Motihari, District Champaran (East) (Bihar), present residing at Mohalla – Neemgaon, Govardhan, District – Mathura (U.P.), PIN-281502.

..... Applicant

Ld. Counsel for the Applicant : **Shri Sudhir Kumar Singh**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi, PIN-110011.
2. The Chief of Army Staff, Head Quarter, New Delhi, PIN-110011.
3. Senior Record Officer, EME Records, PIN-900453, C/o 56 APO.
4. Appellate Committee on First Appeal, Integrated Head Quarter, Ministry of Defence, New Delhi.
5. Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad-14.

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri Ashish Kumar Singh**,
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) To pass an order or direction for quashing of order dated Nil/May/1992, after summoning the same from the respondents, by which the applicant was illegally denied the Disability pension.*
- (II) To pass an order or direction commanding the respondent to grant the benefit of disability pension to the applicant from the date of discharge i.e. 31.10.1991 along with interest @18% per annum till the actual realization of aforesaid amount.*
- (III) To pass an order or direction commanding the respondents to grant the benefits of rounding of the disability pension, in term of Govt. of India letter dated 31.01.2001 and various Judgment of Apex court as well as This Hon’ble Tribunal.*
- (IV) Pass any order which this Hon’ble Tribunal deem fit and proper under the facts and circumstances of the case in favour of the petitioner, in the interest of justice.*
- (V) Allow the Original Application with cost.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 31.03.1979 and was discharged from service in low medical category on 31.10.1991. The Release Medical Board

(RMB) held at Military Hospital, Nasirabad (Rajasthan) on 14.05.1991 assessed his disability '**ESSENTIAL HYPERTENSION (OLD) 401 V-67**' @ 6 – 10% for two years as '**aggravated**' by military service due to stress and strains of service. Disability pension claim was rejected by the Principal Controller of Defence Accounts (Pension), Allahabad vide order dated Nil May 1992 accepting the disability as Neither Attributable to Nor Aggravated by military service. The applicant's First Appeal was also rejected vide letter dated 19.04.2017. It is in this perspective that the applicant has preferred the present O.A.

3. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of enrolment. He had picked up the disease due to stress and strain of service as has been opined by the RMB. However the Principal Controller of Defence Accounts (Pension), Allahabad has rejected the claim on grounds of the disability being NANA as well as less being than 20%. He pleaded that the disability element for the disability be granted to the applicant.

4. Ld. Counsel for the respondents conceded that disability of the applicant @6-10% for two years has been regarded as aggravated by the RMB, but 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 and being less

than 20%, 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 Release Medical Board proceedings as well the records. The questions which needs to be answered are of two fold :-

- (a) Whether the Principal Controller of Defence Accounts (Pensions), Allahabad has authority to overrule the opinion of RMB?
- (b) Whether the applicant is entitled for grant of disability element?

6. This is a case where the disability of the applicant has been held as aggravated by military service by the RMB which was held on 14.05.1991. The RMB assessed the disability @6-10% for two years. However, the opinion of the RMB held on 14.05.1991 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 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*** in Civil Appeal No 164 of 1993, decided on 14.01.1993, 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 14.05.1991 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) it is clear that the disability assessed by RMB on 14.05.1991 cannot be overruled by Principal Controller of Defence Accounts (Pension), Allahabad and 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 dated 14.05.1991.

9. Further, since the applicant was discharged from service before completion of terms of engagement in low medical category, his discharge from service should be considered as invalidation from service as has been held by the Hon'ble Apex Court judgment in the case of **Sukhvinder Singh vs Union of India & Others**, Civil Appeal No. 5605 of 2010, decided on 25.06.2014. In our view, the case is fully covered by the aforesaid decision of Hon'ble the Apex Court in which the substance of what has been held is that even if an individual is assessed to be less than 20%, the *“disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”* Para 9 of the judgment, being relevant is quoted below.

“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it

perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”

10. 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 the period in question i.e. two years from 31.10.1991.

11. Since the applicant's RMB was valid for two years w.e.f. 01.11.1991, hence, the respondents will now have to conduct a fresh RSMB for him.

12. In view of the above, the Original Application No. **329 of 2019** deserves to be allowed, hence **allowed**. The impugned orders dated May 1992 and 19.04.2017 are set aside. The disability of the applicant is held as aggravated by Army Service as has been opined by the RMB. The applicant is in receipt of service element. The applicant is held to be entitled to disability element @20% for two years from the date of his discharge i.e. 31.10.1991. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element. Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order

