

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 546 of 2022

Friday, this the 6th day of January, 2023

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

No. 1287453 Y, Ex. Hav. Prem Singh, son of Anand Singh, R/o
H. No. 63A/137, Dwarika Kunj, Defence Colony, Agra Cantt.
282001, U.P.

..... Applicant

Ld. Counsel for the : **Shri Mahendra Kumar Singh**, Advocate.
Applicant Holding brief of
Shri Pankaj Kumar Shukla, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi.
3. Officer-in-Charge, Artillery Records, Nasik Road Camp, District Nasik (Maharashtra), PIN – 422102.
4. PCDA (Pension), Draupadi Ghat, Allahabad

.....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 to set aside quash the letter/order dated 04 June 1986 pass by respondent no. 3, which is annexed as Annexure No. 1 to this Original Application.*
- B. *To issue/pass an order or directions to the respondents to grant disability element of disability pension @11-14% from the date of SOS i.e. 02.10.1984 (Date of Discharge 01.10.1984) to ten years along with interest @12% on arrears in light of Hon’ble Apex Court.*
- C. *To issue/pass an order or directions to the respondents to grant benefit of rounding off disability pension to the tune of @50% from the date of SOS i.e. 01.10.1984 (Date of Discharge 01.10.1984) to ten years along with interest @12% on arrear in light of Hon’ble Apex Court.*
- D. *To issue/pass an order or directions to the respondents to constitute a fresh Re-Survey Medical Board to assess the present medical condition of applicant as per Para 16 of Amendment to Chapter VI & VII Guide to Medical Officers (Military Pensions) Ministry of Defence 2008 and accordingly disability element of disability pension to the applicant.*
- E. *To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under*

the circumstances of the case in favour of the applicant.

F. To allow this original application with costs.

2. Briefly stated, applicant was enrolled in the Artillery Regiment of Indian Army on 15.05.1967 and was discharged on 30.09.1984 in medical category lower than 'A' and not up to the prescribed military physical standard) under Rule 13(3) III (v) of the Army Rules, 1954. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Amritsar on 10.04.1984 assessed his disability '**AMOEBIC HEPATITIS 006 (b)**' @ 30% for two years and opined the disability to be attributable to military service. The disability claim of the applicant was however rejected by the Principal Controller of Defence Account (Pensions), Allahabad vide letter dated 15.10.1984 on the ground that the disability from which the applicant suffers during his service on which claim based does not fulfil the conditions which was communicated to the applicant vide letter dated 06.11.1984. The Re-Survey medical Board (RSMB) held at Military Hospital, Agra on 31.01.1986 assessed applicant disability @15-19% permanent. The claim for the grant of disability element of disability pension was rejected by the PCDA (P), Allahabad which was communicated to the applicant vide letter dated 04.06.1986. 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 @30% for two years. He further submitted that Principal Controller of Defence Accounts (Pension), Allahabad has no authority to overrule the opinion of RMB. 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

4. Ld. Counsel for the respondents conceded that disability of the applicant @30% for two years has been regarded as **attributable to military service** 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 from which the applicant suffers during his service on which claim based does not fulfil the conditions, hence applicant is not entitled to disability element of disability pension. He further submitted that despite several letters applicant has not reported for assessing his disability by the Re-Survey Medical Board. 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 RMB?
- (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 RMB. The RMB assessed the disability @30% for two years. However, the opinion of the RMB has been overruled by Principal Controller of Defence Accounts (Pensions), Allahabad.

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 10.04.1984 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.

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 i.e. two years from 30.09.1984.

10. Since the applicant's RMB was valid for two years w.e.f. 30.09.1984, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension.

11. In view of the above, the **Original Application No. 546 of 2022** deserves to be allowed, hence, **allowed**. The impugned orders, rejecting the applicant's claim for the grant of disability element of disability pension, are set aside. The disability of the applicant is held as aggravated by military service. The applicant is entitled to get disability element of pension @30% for two years from the next date of his discharge. Respondents are directed to grant disability element of disability element of pension to the applicant @30% for two years from the next date of his discharge. 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.

No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 06 January, 2023

AKD/-