

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 561 of 2022**Monday, this the 9th day of January, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

MS 15458 F Lt. Col. Bhavesh Joshi (Retd.), H.No. 117/74, M Block, Kakadeo, Kanpur, Uttar Pradesh-208019.

..... ApplicantLd. Counsel for the : **Shri J.L. Joel**, Advocate
Applicant

Versus

1. Union of India, Through The Secretary, Government of India, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MoD (Army), New Delhi-110011.
3. Integrated HQ of MoD (Army), Adjutant General’s Branch, Addl. Dte Gen MP (P&P), ORO/MP-7/Adjudication Cell, West Block-III, R K Puram, New Delhi-110066.
4. IHQ of MoD (Army), Adjutant General’s branch, DGMS (Army)/MPRS (O), 3rd Floor, A Block, Defence Office Complex, KG Marg, New Delhi-110011.
5. DGMS (Army)/MPRS (O), Adjutant General’s Branch, Integrated HQ of MoD (Army), KG Marg, A Block, 3rd Floor, Room No. 334, New Delhi-110001.

.....RespondentsLd. Counsel for the : **Ms. Preeti Mala**, 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 quash or set aside Respondents’ letter dated 07.02.2022 about IHQ of MoD, AG/ MP (P&P) ORO/MP/Adjudication Cell letter No. MS-15458F/MPRS(O)/84/2021AG/MP (ORO) dated 25.01.2022 rejecting the disability element of the Applicant and/or;*
- B. *To direct the respondents to grant Disability Element to the Applicant from the date of release from service with effect from 21.01.2021 and to pay arrears along with rounding off benefit @75% as per rules with suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal and/or;*
- C. *Any other relief as this Hon’ble Tribunal may deem fit in the interest of justice and good conscience.*

2. Briefly stated, applicant was initially commissioned in the Indian Army 22.01.2007 and was retired on 21.01.2021 (AN) on completion of terms contractual period in Low Medical Category. At the time of retirement from service, the Release Medical Board (RMB) held at 176 Military Hospital on 28.10.2020 assessed his disabilities (i) **‘PIVD C5-C6, C6-C7 (M-51.9)’ @30%** for life and (ii) **‘BRONCHIAL ASTHMA (ICD J45)’ @30%** for life, **composite disabilities @50% for life** and opined the disabilities to be **Aggravated by** military service. The disability claim of the applicant was however rejected by the competent authority vide letter dated 25.01.2022 on the ground that disabilities do not fulfil the eligibility condition as laid in existing rules/provision which was

communicated to the applicant vide letter dated 07.02.2022. 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 disabilities were found to be aggravated by military service vide RMB which had also assessed the composite disabilities @50% for life. He further submitted that Competent Authority 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 and its rounding off to 75%.

4. Ld. Counsel for the respondents conceded that composite disabilities of the applicant @50% for life have been regarded as **aggravated by** the RMB, but pension sanctioning authority i.e. Competent Authority has rejected the claim of the applicant on the ground that disabilities do not fulfil the eligibility condition as laid in existing rules/provisions. 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 Competent Authority has authority to overrule the opinion of RMB?

(b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. This is a case where the disabilities of the applicant have been held as aggravated by military service by the RMB. The RMB assessed the composite disabilities @50% for life. However, the opinion of the RMB has been overruled by Competent Authority and the disabilities do not fulfil the eligibility condition as laid down in existing rules/provisions.

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 over ruling the opinion of RMB held on 28.10.2020 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 disabilities assessed by RMB cannot be reduced/overruled by Competent Authority, 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 military service as have been opined by the RMB.

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 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.”

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. Further, consequent upon the issue of Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi letter No. 1(9)/2006/D(Pen-C) dated 30.08.2006 and letter No. 16(01)/2012-D(Pen-Pol) dated 23.03.2015, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 23 dated 27.05.2015 wherein it is provided that *“in the case of aggravation too, service element of disability pension in respect of non-regular officers would be calculated after taking into account the full commissioned service rendered by them as calculated in the case of Regular Commissioned Officer. As such EC/SSC officers in aggravation cases would also be allowed the benefit of revision w.e.f. 30.08.2006 as allowed to attributable cases vide MoD letter dated 30.08.2006.”*

12. In view of the Circular No. 23 dated 27.05.2015 issued by the Principal Controller of Defence Accounts (Pension), Prayagraj the applicant is entitled for disability element of disability pension.

13. 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.

7(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 @50% for life to be rounded off to 75% for life may be extended to the applicant from the next date of his retirement.

14. In view of the above, the **Original Application No. 561 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. Both the disabilities of the applicant are held as aggravated by Military Service as has been opined by RMB. The applicant is entitled to get disability element @50% for life which would be rounded off to 75% for life from the next date of his retirement. The respondents are directed to grant disability element to the applicant @50% for life which would stand rounded off to 75% for life from the next date of his retirement. 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.

15. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 09 January, 2023

AKD/-