

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 562 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 15756 X Lt. Col. Arun Kant Singh (Retd.), Village Koran, PO Barahalganj, Teh – Gola, District – Gorakhpur, Uttar Pradesh-273402.

..... 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. Manpoer, ORO/MP-7/Adjudication Cell, West Block-III, R K Puram, New Delhi-110066.
4. 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.
5. The PCDA (Pension), Draupadi Ghat, Allahabad (UP)-211014.

.....RespondentsLd. Counsel for the : **Ms. Prerna 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 quash or set aside Respondents' letter dated 25.03.2022 about IHQ of MoD, AG/MP-7 (ORO letter No.MS-15756X/AMC/MPRS (O)/37/22/AG/ MP (ORO) dated 17.03.2022 rejecting the disability element of the Applicant and/or;*
- B. *To direct the Respondents to grant Disability Pension to the Applicant from the date of release from service with effect from 24.04.2022 and to pay arrears along with rounding off benefit off benefit @50% 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 Army Medical Corps of Indian Army 25.04.2008 and was retired on 24.04.2022 (AN) on completion of contractual period in Low Medical Category. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Kirkee on 13.01.2022 assessed his disabilities (i) '**PIVD C5-C6, C6-C7 (M-41)**' @20% for life as **aggravated by service** and (ii) '**PRIMARY HYPERTENSION (I 10)**' @30% for life as neither attributable to nor aggravated (NANA) by service, **composite disabilities @44% for life**. The disability claim of the applicant was however rejected by the competent authority vide letter dated 17.03.2022 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 25.03.2022. 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 first disability was found to be aggravated by military service vide RMB which had assessed @20% for life. He further submitted that at the time of commissioning, 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. Both the diseases of the applicant were contracted during the service, hence second disability is also attributable to or aggravated by Military Service. He further submitted that Competent Authority has no authority to overrule the opinion of RMB with regard to first disability. 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 50%.

4. Ld. Counsel for the respondents conceded that composite first disability of the applicant @20% for life has been regarded as **aggravated by** the RMB and the second disability has been regarded as NANA 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 three folds:-

- (a) Whether the Competent Authority has authority to overrule the opinion of RMB?
- (b) Whether the second disability of the is also attributable to or aggravated by military service?
- (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 first disability of the applicant has been held as aggravated by military service by the RMB. The RMB assessed the first disability @20% 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 13.01.2022 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 first disability of the applicant should be considered as aggravated by military service as have been opined by the RMB.

9. Further, the law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in

(2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

10. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the second disability '**PRIMARY hypertension (I 10)**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability on 11.01.2020 while posted in Peace location (Allahabad), therefore, applicant is not entitled to disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was commissioned in Indian Army on 25.04.2008 and the second disability has started after more than 11 years of Army service i.e. on 11.01.2020. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra), and the second disability of the applicant should be considered as aggravated by military service.

11. 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."*

12. 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.

13. 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.”

14. 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.

15. 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 @44% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his retirement.

16. In view of the above, the **Original Application No. 562 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 @44% for life which would be rounded off to 50% for life from the next date of his retirement. The respondents are directed to grant disability element to the applicant @44% for life which would stand rounded off to 50% 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.

17. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 09 January, 2023

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