

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 935 of 2022

Wednesday, this the 25th day of January, 2023

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

Col. (Dr.) Saibal Adhya (Retd.), MR-05735N, Med S/o Sushil Adhya,
R/o House No. F3/1203, Neotown, GH-03, Techzone IV, Greater
Noida, Gautam Budh Nagar, UP -201301.

..... Applicant

Ld. Counsel for the : **Wg. Cdr. S.N. Dwivedi (Retd.)**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi -110001.
3. Additional Directorate General of Personnel Service /AG’s Branch/PS-4 (1st Appeal), Integrated Headquarters of Ministry of Defence (Army), 5th Floor, ‘A’ Block, Room No. 527, Defence Offices Complex, KG Marg, New Delhi -110001.
4. Integrated Headquarters of Ministry of Defence (Army), Adjutant General’s Branch, DGMS (Army)/MPRS (O), 3rd Floor, ‘A’ Block, Room No. 334/335, Defence Offices Complex, KG Marg, New Delhi -110001.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P).

.....Respondents

Ld. Counsel for the : **Dr. Gyan 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 the impugned order dated 26.09.2022 (Annexure A-1) by which the First Appeal against non-grant of disability element to the applicant, has been rejected.*
- (b) *To issue/pass any other or direction to declare the ID of Primary Hypertension as attributable /aggravated due to military service conditions, with net assessment qualifying for disability pension @30% for life, rounded up to 50% as per policy issued vide GOI, Ministry of Defence letter No.17(01)/2017/D (Pen/Policy) dated 23.01.2018 and the same circulated vide PCDA (P) Allahabad Circular No. 596 dated 09.02.2018.*
- (c) *To issue/ pass any other order or direction to respondents to pay the disability element with effect from 01.11.2022 for life pay the accrued arrears.*
- (d) *To issue/pass any other order or direction that this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case.*

2. Briefly stated, applicant was commissioned in the Army Medical Corps of Indian Army on 25.12.1987 and retired on 31.10.2022 on attaining the age of superannuation. At the time of retirement from service, the Release Medical Board (RMB) held at Command Hospital, Southern Command, Pune on 11.05.2022 assessed his disability '**PRIMARY HYPERTENSION (I10.0)**' @ 30% for life and opined the disability to be **aggravated by service**. The disability claim of the applicant was however not approved by the competent authority vide letter dated 01.07.2022 on the ground that disability does not fulfil the eligibility conditions as laid down in existing rules/provisions for the grant of disability element. The applicant preferred First Appeal which too was

rejected vide letter 26.09.2022. 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 disability was found to be **aggravated by** military service vide RMB which had also assessed the disability @30% for life. He further submitted that Competent Authority has no power 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 50%.

4. Ld. Counsel for the respondents conceded that disability of the applicant @30% for life has been regarded as **aggravated by** the RMB, but pension sanctioning authority/competent authority has rejected the claim of the applicant on the ground that the disability of the applicant does not fulfil the eligibility conditions as laid down in existing rules/provisions for the grant of disability element, hence applicant is not entitled to disability element of 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 records and we find that the questions which need to be answered are of two folds:-

- (a) Whether the Competent Authority has power 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 disability of the applicant has been held as aggravated by military service by the RMB. The RMB assessed the disability @30% for life. However, the opinion of the RMB has been overruled by Competent Authority and Appellate Committee on First Appeal 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 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 11.05.2022 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 disability 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 disability of the applicant should be considered as aggravated by military service as has 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 January 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 appellants 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. 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** as well as Government of India, Ministry of Defence letter No. 17(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 @30% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his retirement.

12. In view of the above, the **Original Application No. 935 of 2022** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The disability of the applicant is held as aggravated by Army Service. The applicant is entitled to get disability element @30% 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 @30% for life which would stand rounded off to 50% for life from the next date of his retirement. The respondents are further 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 the actual payment

13. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 25 January, 2023

AKD/Ashok/-