

**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 1185 of 2023**

Wednesday, this the 22<sup>nd</sup> day of January, 2025

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

No. 14514813-A Ex. Nk. Bharat Singh Rawat, son of Late Gulab Singh, resident of Village – Saina, PO – Birmoli Khal, District – Pauri Garhwal (Uttarakhand), PIN-246144, presently residing at C/o Rajwant Singh, House No. 418/498, Garhi Peer Khan, Thakurganj, Lucknow (U.P.), PIN-226003.

**..... Applicant**

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

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi, PIN-110011.
2. The Chief of Army Staff, Sena Bhawan, New Delhi, PIN-110011.
3. Senior Record Officer, EME Record Office, PIN-900453, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad, PIN-211014.

**.....Respondents**

Ld. Counsel for the Respondents. : **Shri Bipin Kumar Singh**, Advocate  
Central Govt. Standing Counsel

## ORDER

**“Per Hon’ble Mr. Justice Anil Kumar, 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 quash the order dated 02.02.1993 after summoning the same from respondents and order dated 17.03.2023 which is annexed as Annexure No. 1 to this original application.*
- (II) *to pass an order or direction commanding the respondents to grant the disability pension @50% from the next date of discharge i.e. 01.10.1992, with interest @12% per annum from the date due till actual realization of the aforesaid amount after adjusting the 40% of disability amount already paid.*
- (III) *To pass an order or direction commanding the respondents to grant the benefits of rounding of the disability pension up to the tune of 50%, in terms 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. Briefly stated, applicant was initially enrolled in the Corps of EME of Indian Army 16.11.1973 and discharged on 31.10.1992 being placed in medical category lower than ‘A’ and not upto the prescribed military physical standard under Rule 2A and Rule 13 (3) Item III (v) of the Army Rules, 1954. The applicant is in receipt of Service Pension. Before discharge from service, the Release Medical Board (RMB) held at 155 Base Hospital, Tejpur on 14.05.1992 assessed his disability ‘**PRIMARY HYPERTENSION (401)**’ @20% for five years and opined the disability to be

**aggravated by** military service. The disability claim of the applicant was however rejected by the Principal Controller of Defence Account (Pensions), Allahabad vide letter dated 02.02.1993 on the ground that the disability of the applicant was neither attributable to nor aggravated by military service and constitutional in nature which was communicated to the applicant vide letter dated 17.02.1993. The applicant preferred Petition dated 17.02.2023 which too was rejected vide letter dated 17.03.2023. 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 @20% for five years. He further pleaded that at the time of enrolment, 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. He further submitted that Principal Controller of Defence Accounts (Pension), Allahabad has no authority to overrule the opinion of RMB. Ld. Counsel for the applicant relying upon the order dated 20.07.2021 passed by this Tribunal in Original Application No. 702 of 2020 titled **Ex. Sep. Birendra Singh Vs. Union of India & Others** and order dated 07.07.2021 passed by this Tribunal in Original Application No. 386 of 2019 titled **Ex. Sigm. Raghu Bir Singh Negi Vs. Union of India & Others** submitted that the respondents be directed to hold

Re-Survey Medical Board (RSMB) of the applicant for further entitlement of disability pension. He further 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 @20% for five years has been regarded as **aggravated by** 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 of the applicant is neither attributable to nor aggravated by military service, hence applicant is not entitled to disability element of disability pension in terms of Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I) which provides that *“Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated -by military service in non-battle casualty and is assessed at 20 per cent or over”*. 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 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 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 @20% for five years. However, the opinion of the RMB 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 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 before

discharge 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. 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 10<sup>th</sup> 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."*

10. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017/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, in the case of ***Union of India & Others Versus Ex. Sep. R. Munusamy***, Civil Appeal No. 6536 of 2021, decided on 19.07.2022, in para 13, 14 and 15 the Hon'ble Supreme Court has observed as under :-

*"13. In the considered opinion of this Court, the Tribunal fell in error in passing its order dated 2nd November 2018 directing the Appellants to convene a Resurvey/Review Medical Board at the Military Hospital, Chennai or a designated hospital for the purpose of examining the applicant and assessing the degree of disability due to "Right Partial Seizure with Secondary Generalisation 345" and the probable duration of disability. The tenor of the order itself shows that even the Tribunal realized that accurate medical opinion could not have been obtained after lapse of 30 years from the date of recruitment of the Respondent and after 20 years from the date of his discharge. The Tribunal, therefore, sought assessment of 'probable duration of disability'.*



14. *Be that as it may, the Appellants, in compliance of the order of the Tribunal, convened a Review Medical Board as directed and submitted a report. The Tribunal noted :-*

*“7. From the Resurvey Medical Board dated 11.4.2019 held pursuant to our order dated 02.11.2018 placed before us, it is seen that the applicant’s disease “Right Partial Seizure with Secondary Generalisation 345” has now been considered as ‘Remained Static’ and the degree of the disability has been assessed @ 20% for life with effect from 08.04.2019. The Board also assessed the degree of disability for the intervening period from 27.03.1989 and 25.03.1989 @ 20%. The applicant has prayed for grant of disability pension.”*

*15. Significantly, even the Resurvey Medical Board did not opine that the disability, if any, of the Respondent was either caused or aggravated by military service. Even otherwise, the question of entitlement of soldier to disability pension cannot be determined on the basis of medical examination conducted 20 years after his discharge.”*

12. Although the applicant’s RSMB was valid for the period of five years from 01.11.1992 but in view of law laid down by the Hon’ble Apex Court in the case of **Union of India & Others Versus Ex. Sep. R. Munusamy** (supra) we are of the considered opinion that after a lapse of more than 32 years from the date of discharge it will not be appropriate to direct the respondents to conduct Re-Survey Medical Board (RSMB) to assess his disability. Even otherwise, the question of entitlement of applicant to disability element of disability pension cannot be determined on the basis of medical examination conducted 32 years after his discharge.

13. In view of law laid down by the Hon’ble Apex Court in the case of **Union of India & Others Versus Ex. Sep. R. Munusamy** (supra) the order dated 20.07.2021 passed by this Tribunal in

Original Application No. 702 of 2020 titled **Ex. Sep. Birendra Singh Vs. Union of India & Others** and order dated 07.07.2021 passed by this Tribunal in Original Application No. 386 of 2019 titled **Ex. Sigm. Raghu Bir Singh Negi Vs. Union of India & Others** are not applicable in the instant case.

14. 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.17(01)/2017/D(Pen/Policy) dated 23.01.2018 and since benefit of rounding off has been extended w.e.f. 01.01.1996, hence, the applicant is entitled for the grant of disability element of disability pension @20% for five years from the next date of his discharge i.e. from 01.10.1992 to 30.09.1997 and the disability element would be rounded off to @50% from 01.01.1996 to 30.09.1997.

15. In view of the above, the **Original Application No. 1185 of 2023** deserves to be partly allowed, hence **partly 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 Military Service as has been opined by RMB. The applicant is entitled to get disability element @20% for five years from the next date of discharge i.e. from 01.10.1992 to 30.09.1997 and the disability element would be rounded off to @50% from 01.01.1996 to 30.09.1997 i.e. from the date of applicability of rounding off. The respondents are directed to grant disability element @20% for five years from the next date

of discharge i.e. from 01.10.1992 to 30.09.1997 and the disability element would be rounded off to @50% from 01.01.1996 to 30.09.1997 i.e. from the date of applicability of rounding off. The applicant is not entitled for the Re-Survey Medical Board. 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.

16. No order as to costs.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated : 22 January, 2025

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