

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 395 of 2024

Tuesday, this the 28th day of January, 2025

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

MS-15867P Lt. Col. Amit Bhardwaj (Retd), S/o Shri Rama Sharma, R/o D-138, Govindpuram, District – Ghaziabad, Uttar Pradesh-201013.

..... Applicant

Ld. Counsel for the : **Shri Raj Kumar Mishra**, Advocate
 Applicant **Ms. Upasna Mishra**, Advocate
Shri Pradeep Kumar Mishra, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block-III, DHQ PO, New Delhi-110011.
3. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Prayagraj, Uttar Pradesh-211014.
4. Integrated Headquarters of MoD (Army) MPRSO Adjutant General’s branch, DGMS Army/MPSO (O), 3rd Floor, ‘A’ Block, Defence Office Complex, KS Marg, New CDelhi-110001.

.....Respondents

Ld. Counsel for the : **Dr. Gyan Singh**, Advocate
 Respondents. 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 :-

- (a) *To issue/pass an order or direction of appropriate nature to the respondents to set aside/quash the impugned order MS-15867P/MPRS (O)/172/22/AG/MP (ORO) dated 28.09.2022, MS-15867P/MPRS(O)/NE/531/2022/AG/PS-4 (1st appeal) dated 10.03.2023, B/38046A/363/2023/AG/PS-9 dated 07.12.2023.*
- (b) *To issue/pass an order or direction of appropriate nature to the respondents directing to grant disability pension from the date next to the date of discharge i.e. 12.08.2022 and interest thereon at the rate of 18% per annum.*
- (c) *Issue/pass an order or direction to the respondents to round off the disability pension from 58% for life to 75% for life in terms of benefit of broad-banding as held in Ram Avtar’s case.*
- (d) *Issue/pass any other order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.*
- (e) *Allow this application with exemplary costs.*

2. Briefly stated, applicant was commissioned in the Army Medical Corps of Indian Army 12.08.2008 and was retired on 11.08.2022 in permanent Low Medical Category on completion of terms of engagement after rendering 14 years of service. Before retirement from service, the Release Medical Board (RMB) held at 181 Military Hospital, C/o 99 APO on 16.06.2022 assessed his disabilities (i) **‘PIVD C5-6 (ICD CODE – M50.1)’ @30%** and (ii) **‘HBV INFECTION (ICD CODE B19.1)’ @40%, composite disabilities @58% for life** and opined the disabilities to be

attributable to military service. The disability claim of the applicant was however '**NOT APPROVED**' by the competent authority vide letter dated 28.09.2022 on the ground that the disabilities do not fulfil the eligibility conditions as laid down in existing rules/provisions for the grant of disability element. The applicant preferred First Appeal dated 16.10.2022 which too was rejected vide letter dated 10.03.2023. The applicant preferred Second Appeal dated 07.04.2023 which too was rejected vide letter dated 07.12.2023. 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 disabilities WERE found to be **attributable to** military service vide RMB which had also assessed the composite disabilities @58% for life. He further pleaded that at the time of commission, 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 commission in Army. 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 pension and its rounding off to 75%.

4. Ld. Counsel for the respondents conceded that composite disabilities of the applicant @58% for life have been regarded as

attributable to military service the RMB, but competent authority has 'NOT APPROVED' the claim of the applicant on the ground that the disabilities of the applicant do not fulfil the eligibility conditions as laid down in existing rules/provisions for the grant of disability pension and regarded the disabilities as neither attributable to nor aggravated by military service (NANA), hence applicant is not entitled to disability pension in terms of Regulations 37 (a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that *"An Officer who retires on attaining the prescribed age of retirement or on completion of tenure, if found suffering on retirement, from a disability which is either attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted in addition to the retiring pension admissible, a disability element from the date of retirement if the degree of disability is accepted at 20% or more"* and Regulation 81 of the Pension Regulations for the Army, 2008 (Part-I) which stipulates that *'service personnel who is invalided from service on account of disability which is attributable to or aggravated by such service may, be granted disability pension consisting of service element and disability element'*. He further submitted that the applicant sustained the injury on 16.02.2021, while returning back to unit in a civil hired transport after transferring a patient to higher centre. The applicant moved out of the car and he accidentally slipped, fell down and sustained a sudden jerk in his neck. The

injury has no causal connection with military service, hence, the first disability of applicant has been regarded as NANA by service in terms of Rule 6 and 9 of Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008. Also, the disablement has been re-assessed to 15% due to veterans refusal for surgery. The second disability has been re-assessed @10%, which is less than 20%, as there was no evidence of complications and liver function tests were normal at the time of applicant's release. He further contended that that Para 5 of Entitlement Rules for Casualty Pensionary Awards in Armed Forces Personnel, 2008 stipulates that *"The medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore, it may not detect some dormant disease. Besides certain hereditary constitutional and congenital diseases may manifest later in life, irrespective of service conditions. The mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service."* 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 competent authority 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 disabilities of the applicant have been held as attributable to military service by the RMB. The RMB assessed the composite disabilities @58% for live. However, the opinion of the RMB has been overruled by competent authority and the disabilities have been regarded as neither attributable to or aggravated by military service and applicant's disability claim has 'Not approved'.

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 16.06.2022 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 disabilities of the applicant should be considered as attributable to 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 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. 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, we are of the considered view that benefit of rounding off of disability pension @58% for life to be rounded off to @75% 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. 395 of 2024** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability pension, are set aside. Both the disabilities of the applicant are held as attributable to Military Service as have been opined by RMB. The applicant is entitled to get disability pension @58% 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 pension to the applicant @58% 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.

13. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 28 January, 2025

AKD/-