

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 437 of 2024**Monday, this the 20th day of January, 2025**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Maj. Gen. Sanjay Singh, Member (A)”**

IC54790N Colonel Sanjay Washington (Retired), son of Late Sri R. Washington, resident of 136/37, Dobhalwala, Neshvilla Road, Dehradun, Uttarakhand-248001.

..... ApplicantLd. Counsel for the : **Col. R.C. Jain (Veteran)**, Advocate
Applicant **Ms. Divya Jain**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), New Delhi-110011.
3. Additional Directorate General of Personnel Services [AG/PS-4 (ORO)], Adjutants General’s Branch, IHQ of MoD (Army), West Block-3, R.K. Puram, New Delhi-110066.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad-211014.

.....RespondentsLd. Counsel for the : **Ms. Anju 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) *Issue/pass an order or direction to the respondents to quash/set-aside illegal and unjust orders denying disability pension for the disabilities (i) PIVD C-4 C5 C-6 and (ii) for Fracture LV4 with LUMBER SPONDYLOSIS.*
- (b) *Issue/pass an order or direction to the respondents to grant disability element of disability pension for the disabilities (i) PIVD C4 C5 C-6 @30% for life and (ii) for Fracture LV4 with LUMBER SPONDYLOSIS @20% for life with composite assessment for all the disabilities @44% for life, from the date of superannuation, i.e. 30 Nov 2021 for life, with arrears and interest, and benefit of rounding off to 50%.*
- (c) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (d) *Allow this application with exemplary cost.*

2. Briefly stated, applicant was initially commissioned in the Indian Army 22.08.1992 and retired on 30.11.2021 on attaining the age of superannuation. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Bareilly on 14.07.2021 assessed his disabilities (i) **‘PIVD C-4 C-5 C-6 (ICD – M50.0)’ @30% for life as aggravated by service** and (ii) **‘FRACTURE LV4 WITH LUMBAR SPONDYLOSIS (ICD – M47.81)’ @20% for life as neither attributable to nor aggravated by service (NANA), composite disabilities @44% for life.** The applicant’s claim for the grant of disability element of disability pension was however ‘Not Approved’ by the Competent Authority

vide letter dated 17.01.2022 stating that the disabilities of the applicant do not fulfil the eligibility condition as laid down in existing rules/provision for the grant of disability element which was communicated to the applicant vide letter dated 28.03.2022. The applicant preferred First Appeal dated 30.04.2022 which too was rejected vide letter dated 09.11.2022 which was later on amended vide letter dated 02.12.2022. The applicant also preferred Second Appeal dated 10.01.2023 which too was rejected vide letter dated 08.12.2023. 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 first disability was found to be **aggravated by** military service vide RMB which had also assessed the disability @30% for life. In August, 2005 the applicant while in process of getting ready to go for unit activities, slipped and suffered Fracture in his Lumber 4 Vertebra and the applicant was placed in low medical category of P2 (Permanent) for the aforesaid injury/second disability as such the second disability is also attributable to or aggravated by military service. When the applicant apprised the respondents that he was on parade and not on leave in August, 2005, the day when he sustained injury, respondent No. 3 issued an amendment vide their letter dated 02.12.2022 stating that the applicant sustained the injuries due to fall in the bathroom at his home, therefore, not connected with the duties, hence, not attributable to military service. He further pleaded that there is clear connection between

the injury sustained by the applicant and the duty as the applicant was getting ready for the unit activities. 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 first disability of the applicant @30% for life has been regarded as **aggravated by** the RMB and the second disability @20% for life has been regarded as NANA by the RMB, but the Competent Authority has 'Not Approved' the claim of the applicant on the ground that the disabilities of the applicant are neither attributable to nor aggravated by military service, hence applicant is not entitled to disability element of 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"*. Ld. Counsel for the respondents further submitted that the applicant was detected to have PIVD C-4 C-5 C-6 at Surankot (Field) in February, 2000.

The onset of neck pain was insidious and the neurological findings and grip both hands was normal. There was no history of major trauma for which injury report was initiated. The radiological investigations revealed disc degenerative changes. He was advised surgery which the applicant refused, thereafter he was managed conservatively with physiotherapy and followed up in low medical category. The applicant was given sheltered appointment and did not have any field tenure after again being placed in low medical category. There was no sensory motor deficit or spinal deformity MRI spine showed degenerative changes. Therefore, PIVD C-4 C-5 C-6 is recommended to be held as NANA in terms of Para 51, Chapter VI, Guide to Medical Officers (Military Pensions), 2002/2008 should have been 15% due to refusal for corrective surgery. For the grant of disability element of disability there must be causal connection between the injury and military service. The applicant sustained injury i.e. Fracture LV4 with Lumbar Spondylosis due to fall in the bathroom at home on 17.08.2005. The applicant was not performing bonafide military duty at the time of incident/injury sustained. The Injury report dated 23.02.2006 opined the injury as not attributable to military service. Service HQ being the competent authority in injury cases has also held the injury as not attributable to service vide note 10, para 1(h) ante and we concur in terms of Entitlement Rules for Casualty Pensionary Awards, 2008. She further submitted 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.”* She 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 three folds:-

- (a) Whether the Competent Authority has authority to overrule the opinion of RMB with regard to first disability?
- (b) Whether the second disability of the applicant is attributable to or aggravated by Military Service?
- (c) 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 disability @30% for life. However, with regard to first disability the opinion of the RMB has been overruled by the

Competent Authority and the first disability has also 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 14.07.2021 with regard to first disability 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 the Competent Authority, hence the decision of Competent Authority with regard to first disability is void. Hence, we are of the opinion that the first disability of the applicant should be considered as aggravated by military service as has been opined by the RMB.

9. With regard to second disability of the applicant we find that the applicant sustained injury i.e. **‘FRACTURE LV4 WITH LUMBER SPONDYLOSIS’** due to fall in bathroom at Home on 17.08.2005 and at that time he was not performing bonafide military duty as such there is no causal connection between the aforesaid injury/disability and military service. For the grant of disability element of disability pension there must be some causal connection between the disability/injury and military service. In the instant case the activity in which the applicant sustained injury being not connected with his military duties in any manner, he is not entitled to the disability element of disability pension for the second disability.

10. 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.”

11. 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.

12. 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 @30% for life to be rounded off to 50% for life for the first disability may be extended to the applicant from the next date of his retirement.

13. In view of the above, the **Original Application No. 437 of 2024** deserves to be partly allowed, hence **partly allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension for the first disability, are set aside. The first disability of the applicant is held as aggravated by Military Service as has been opined by RMB. The second disability of the applicant is held as NANA as has been opined by the RMB.

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 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.

14. No order as to costs.

(Maj. Gen. Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 20 January, 2025

AKD/-