

**Court No. 1**

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

**ORIGINAL APPLICATION No. 607 of 2023**

Thursday, this the 30<sup>th</sup> day of January, 2025

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

Ex. Naik Vanama Srinivas Rao (13947164-X) S/o Late Shri Vanama Sri Rama Murthy, R/o Ponnur, Gunutr, Andhra Pradesh - 522124.

**..... Applicant**

Ld. Counsel for the : **Wg. Cdr. Ajit Kakkar (Retd)** , Advocate  
 Applicant **Shri Manoj Kumar Awasthi**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi -110001.
2. PCDA (Pension), Draupadi Ghat, Near Sadar Bazar, Prayagraj, Uttar Pradesh -211014.
3. Chief of Army Staff, IHQ MoD (Army), Sena Bhawan, New Delhi -110001.
4. Senior Record Officer, Army Medical Corps, Record Office, PIN No. 900450, C/o 56 APO.

**.....Respondents**

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**, Advocate  
 Respondents. Central Govt. Standing Counsel

## **ORDER**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- a. To set aside the Impugned/Rejection letter dated 06.07.2022.*
- b. To direct the respondents to bring all service and medical documents including the RMB on record with advance copy to the applicant.*
- c. To grant disability pension to the Applicant from the date of Release (30.04.1994) w.e.f. 01.05.1994.*
- d. To direct the Respondents to grant broad banding of the disability pension w.e.f. 01.05.1994.*
- e. To direct the Respondents to issue a corrigendum PPO pertaining to the disability pension and broad banding of the disability pension of the Applicant.*
- f. To direct the Respondents to pay arrears of disability pension and broad banded disability pension along with interest @8% w.e.f. 01.05.1994.*
- g. To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.*

2. Briefly stated, applicant was enrolled in the Army Medical Corps of Indian Army 15.12.1978 and discharged on 30.04.1994 before completion of terms of engagement in permanent Low Medical Category being unwillingness to continue in alternative appointment under Rule 13 (3) Item III (v) of the Army Rules, 1954 after rendering 15 years, 04 months and 16 days of service. The applicant is in receipt of Service Pension. Before discharge from

service, the Release Medical Board (RMB) held at Command Hospital (Southern Command), Pune on 15.02.1994 assessed his disabilities (i) **'PULMONARY EOSINOPHILIA 516 (b)'** @15-19% as **aggravated by service**, (ii) **'ESSENTIAL HYPERTENSION-401'** @20% as **aggravated by service**, (iii) **'HEPATO INTESTINAL AMOEBEASIS 006(b)'** @20% as **attributable to service** and (iv) **'OBESITY (UNCOMPLICATED) - 278'** @ 6-10% as neither attributable to nor aggravated by service, **composite disabilities @30% for five years**. However, the Principal Controller of Defence Account (Pensions), Allahabad has granted disability element of disability pension @30% for **two years** from 01.05.1994 to 14.02.1996 vide PPO No. DE/003678/94 dated 31.03.1995. The Army Medical Corps Record Office had communicated to the applicant that the competent authority has rejected the disability claim for the second and third disabilities vide letter dated 01.05.1995. The Re-Survey Medical Board (RSMB) held on 10.03.1998 assessed the applicant disabilities (i) **'PULMONARY EOSINOPHILIA'** and (ii) **'HEPATO INTENSTINAL AMOEBIASIS'** @30% for five years. However, the disability element of disability pension claim of the applicant was rejected by the Principal Controller of Defence Account (Pensions), Allahabad by reducing the degree of disability from @30% to @11-14% for five years from 15.02.1996 to 09.03.2003 vide letter dated 26.08.1998 which was communicated to the applicant vide letter dated 17.09.1998. The applicant preferred applications dated

17.06.2022 and 22.07.2022 for the grant of disability pension which too was rejected vide letter dated 06.07.2022. 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 and second disabilities were found to be aggravated by military service vide RMB and third disability was found to be attributable to military service vide RMB which had also assessed the composite disabilities @30% for five years, the period of which has been reduced for two years by the Principal Controller of Defence Accounts (Pension), Allahabad. Accordingly, the applicant was granted disability element of disability pension for two years from 01.05.1994 to 14.02.1996. Further, the RSMB held on 10.03.1998 assessed the applicant's disabilities @30% for five years but the Principal Controller of Defence Accounts (Pension), Allahabad has reduced the degree of composite disabilities from @30% to @11-14% for five years from 15.02.1996 to 09.03.2003 and has rejected the applicant's claim for the grant of disability element of disability pension on the ground of disabilities being less than @20% vide order dated 26.08.1998 which was communicated to the applicant vide letter dated 17.09.1998. 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 RSMB. 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 50%.

4. Ld. Counsel for the respondents conceded that the first and second disabilities of the applicant have been regarded as aggravated by military service by the RMB and third disability of the applicant has been regarded attributable to military service by the RMB, composite disabilities @30% for five years but the Principal Controller of Defence Accounts has reduced the period from five years to two years and accordingly granted disability pension from 01.05.1994 to 14.02.1996. He further submitted that although the RSMB held on 10.03.1998 assessed the applicant's disabilities @30% for five years but pension sanctioning authority i.e. Principal Controller of Defence Accounts (Pensions), Allahabad has reduced the degree of disabilities from @30% for five years to @11-14% for five years from 15.02.1996 to 09.03.2003 and rejected the claim of the applicant on the ground of disabilities being less than @30%, 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".* Before completion of applicant's assessment period, the applicant was called to report to their Hospital immediately for Re-Survey Medical Board vide letters dated 13.02.2002, 18.03.2002 and 19.07.2004 but the applicant had submitted his unwillingness to undergo RSMB vide personal application dated 31.07.2004, hence, the applicant is not entitled for the conduct of RSMB. 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 RSMB by reducing the degree of disability of the applicant?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension from 15.02.1996 to 09.03.2003?

- (c) Whether the applicant is entitled for conduct of RSMB to assess his present disability for the grant of further disability element of disability pension?

6. In para 6 and 7 of the Counter Affidavit the respondents have stated that the RSMB held at Military Hospital, Secunderabad on 10.03.1998 assessed the applicant's disabilities @30% for five years which was reviewed and reassessed @11-14% for five years from 15.02.1996 to 09.03.2003 by the Principal Controller of Defence Accounts (Pension), Allahabad. The respondents have not filed the copy of RSMB held on 10.03.1998.

7. This is a case where the first and second disabilities of the applicant have been opined as aggravated by military service by the RMB and the third disability of the applicant has been opined as attributable to military service by the RMB. The fourth disability of the applicant has been assessed @6-10% as NANA by the RMB. The composite degree of disabilities have been assessed @30% for five years, the period of which have been reduced to two years by the Principal Controller of Defence Accounts (Pension), Allahabad and accordingly, the applicant was granted disability element of disability pension @30% for two years from 01.05.1994 to 14.02.1996. Further, the RSMB held on 10.03.1998 assessed the applicant's disabilities @30% for five years from 15.02.1996 to 09.03.2003. However, the opinion of the RSMB held on 10.03.1998 has been overruled by Principal Controller of Defence Accounts

(Pensions), Allahabad and the degree of disabilities have been reduced from @30% to @11 to 14% from 15.02.1996 to 09.03.2003.

8. The issue of sanctity of the opinion of a Re-Survey 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 the Principal Controller of Defence Accounts (Pensions), Allahabad over ruling the opinion of RSMB held on 10.03.1998 with regard to reducing the percentage of disabilities 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.”*

9. 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 RSMB cannot be reduced/overruled by Principal Controller of Defence Accounts (Pension), Allahabad, hence the decision of the Principal Controller of Defence Accounts (Pensions), Allahabad is void. Hence, we are of the opinion that the disabilities of the applicant should be considered @30% from 15.02.1996 to 09.03.2003 as has been opined by the RSMB.

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 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 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 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. 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)***, we are of the considered view that benefit of rounding off of disability pension @30% to be rounded off to 50% may be extended to the applicant from 15.02.1996 to 09.03.2003.

12. 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.”*

13. Although the applicant's RSMB was valid for the period from 15.02.1996 to 09.03.2003 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 25 years from the date of last RSMB held on 10.03.1998, it will not be appropriate to direct the respondents to conduct Re-Survey Medical Board (RSMB) to assess his present disability. Further, the applicant has himself given unwillingness for holding RSMB vide his personal application dated 31.07.2004. Even otherwise, the question of entitlement of applicant to disability element of disability pension cannot be determined on the basis of medical examination conducted 25 years after his last RSMB.

14. In view of the above, the **Original Application No. 607 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 @30% for the period from 15.02.1996 to 09.03.2003. The applicant is entitled to get disability element @30% which would be rounded off to 50% from 15.02.1996 to 09.03.2003. The respondents are directed to grant disability element to the applicant @30% which would stand rounded off to 50% from 15.02.1996 to 09.03.2003. The applicant is not entitled for the RSMB. 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.

15. No order as to costs.

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

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

Dated : 30 January, 2025

AKD/-