

**Court No. 1**

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

**ORIGINAL APPLICATION No. 931 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)”**

Service No. IC-44853X, Col. Umendra Kumar Vaish (Retd.), son of Shri Shyam Lal Vaish, resident of House No. 3/26, Vinamra Khand, Gomti Nagar, Near Old Amity Campus, Lucknow-226010.

**..... Applicant**

Ld. Counsel for the : **Maj. S.M. Mustafa (Retd.)**, Advocate  
 Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi-110011.
3. Additional Directorate General, Manpower, ORO/MP-7/Adjucation HQ Cell, Adjutant General’s branch, Integrated HQ of MOD (Army), West Block-III, R.K. Puram, New Delhi-110066.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj-211014.

**.....Respondents**

Ld. 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) *To set-aside/quash the rejection order for disability element contained as Annexure A-1.*
- (b) *To pass an order/direction to the Respondents to grant disability element from the next date of discharge i.e. 01.01.2021.*
- (c) *To issue/pass an order or direction to the respondents to reassessing the disability No. 3 (BILATERAL MODERATE SENSORINEURAL HEARING LOSS) as 20% for life, thereby the composite assessment would be 61.5 which would be rounded off to 75% for life.*
- (d) *To issue/pass an order or direction to the respondents to pay arrears of disability element accrued till date.*
- (e) *Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- (f) *Cost of the original application be awarded in favour of the applicant.*

2. Briefly stated, applicant was commissioned in the Indian Army on 13.06.1987 and retired on 31.12.2020 in Low Medical Category after rendering 33 years, 04 months and 18 days of service. The applicant is in receipt of Service Pension. Before retirement from service, the Release Medical Board (RMB) held at Kanpur / 7 AIR Force Hospital on 25.09.2020 assessed his disabilities (i) **‘IRON DEFICIENCY ANAEMIA (D50)’ @5%,** (ii) **‘SIGMOID POLYP (TUBULAR ADENOMA WITH LOW GRADE**

**DYSPLASIA) (D12.6)' @20%, (iii) 'BILATERAL MODERATE SENSORINEURAL HEARING LOSS (H90.3 & Z09.0)' @5%, (iv) 'GOUTY ARTHRITIS (M10 7 Z09.0)' @20% and (iv) 'PIVD L5-S1 (M-51.2 & Z09.0)' @20%, composite disabilities @55% for life** and opined the disabilities Nos. (i) and (ii) to be neither attributable to nor aggravated (NANA) by service and disabilities Nos. (iii), (iv) and (v) to be **aggravated by service**. However, the applicant's claim for grant of disability element of disability pension was 'Not Approved' by the competent authority vide letter dated 18.01.2022 on the ground that the disabilities do not fulfil the eligibility condition as laid down in existing rules/provision for the grant of disability element. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant 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. The first and second disabilities of the applicant were contracted during the service, hence they are also attributable to and aggravated by Military Service. He further contended that the third, fourth and fifth disabilities have been regarded as **aggravated by service** by the RMB. The competent authority has no authority to overrule the opinion of RMB with regard to third, fourth and fifth disabilities. He further contended that the third disability, which is a hearing loss, cannot be assessed less than

20% in terms of para 20 of Amendment to Chapter VII - Assessment of Guide to Medical Officers-2008 (Military Pensions), 2008. Taking into the consideration the composite assessment of all the disabilities comes to @61.10% for life instead of @55% for life. 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 75%.

4. The Original Application was filed on 03.08.2023. The respondents were granted several opportunities to file Counter Affidavit. Vide order dated 07.08.2024 the respondents were granted last chance of four week to file counter affidavit with condition that failing which opportunity to file counter affidavit shall be closed. In spite of specific order dated 07.08.2024, the respondents have failed to file Counter Affidavit, hence, opportunity to file Counter Affidavit was closed vide order dated 04.10.2024 and it was directed that respondents may file documents in support of their version before next date of listing and the case is fixed today for hearing. The respondents have failed to file any documents in support of their version.

5. Ld. Counsel for the respondents orally contended that the first and second disabilities of the applicant @5% and 20% respective have been regarded as NANA by the RMB and although the third, fourth and fifth disabilities of the applicant @5%, 20% and 20% respectively have been regarded as **aggravated by service**

by the RMB but the competent authority has 'Not Approved' the claim for the grant of disability element of disability pension on the ground that disabilities do not fulfil the eligibility conditions as laid down in existing rules/provisions for the grant of disability element, hence as per 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*" the applicant is not entitled to disability element of disability pension. She pleaded for dismissal of the Original Application.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are three folds:-

- (a) Whether the first and second disabilities of the applicant are attributable to or aggravated by Military Service?
- (b) Whether the Competent Authority has authority to overrule the opinion of RMB with regard to third, fourth and fifth disabilities?

- (c) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

7. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

*"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).*

*29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].*

*29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).*

*29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the*

*circumstances of duty in military service [Rule 14(c)]. [pic]*

*29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].*

*29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."*

8. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the second disability '**SIGMOID POLYP (TUBULAR ADENOMA WITH LOW GRADE DYSPLASIA) (D12.6)**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of first disability on 30.07.2020 while posted in Peace location (Kanpur), therefore, applicant is not entitled to disability element of disability pension for the second disability. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability element of disability pension for the second disability to applicant is cryptic, not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was commissioned in Indian Army on

21.01.2000 and the second disability has started after more than 20 years of Army service i.e. on 30.07.2020. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra), and the **second disability** of the applicant should be considered as aggravated by military service.

9. However, with regard to first disability i.e. '**IRON DEFICIENCY ANAEMIA (D50)**' we agree with the opinion of the RMB as NANA as there is no history of exposure to toxic effect of certain chemicals as well as no service related causative factor like septic infections and exposure to obnoxious agents.

10. Further, this is also a case where the third, fourth and fifth disabilities of the applicant have been held as **aggravated** by military service by the RMB. The RMB assessed the third, fourth and fifth disabilities @5%, @20% and @20% respectively for life. However, the opinion of the RMB has been overruled by competent authority and the third, fourth and fifth disabilities have been regarded as neither attributable to or aggravated by military service.

11. 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 before retirement 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.”*

12. 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 third, fourth and fifth disabilities is void. Hence, we are of the

opinion that the third, fourth and fifth disabilities of the applicant should be considered as aggravated by military service as have been opined by the RMB.

13. The matter with regard to assessment of hearing loss is pending before the Larger Bench, Armed Forces Tribunal, Principal Bench, New Delhi, hence, we are not inclined to adjudicate the assessment of third disability, which is a hearing loss and we are deciding the case on the basis of assessment made by the RMB.

14. In para 17 A (a) of Chapter VII of the Guide to Medical Officer (Military Pensions), 2002 the provision for composite assessment has been mentioned which reads as under :-

***“17A. Composite Assessment***

*(a) Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment will be the arithmetical sum of their separate assessment. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping. There is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases. This is not correct.”*

15. In the instant case there are functional effects of the second, third, fourth and fifth disabilities overlapping, as such composite assessment is to be reduced in proportion to the degree of overlapping. The degree of second disability is @20%, third disability is @5%, fourth disability is @20% and fifth disability is @20% for which we are of the view that there is some overlapping.

The degree of first disability is @5% which has been held as NANA by us. The composite assessment of all the disabilities is @55% for life. If we deduct the degree of first disability from the composite disabilities (@55% - @5% = @50%) then it comes to @50%. Accordingly, we hold that composite assessment of second, third fourth and fifth disabilities is @50% for life.

16. 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 invalided 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."*

17. 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.

18. 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 element of disability pension @50% for life to be rounded off to 75% for life for the second, third, fourth and fifth disability may be extended to the applicant from the next date of his retirement.

19. In view of the above, the **Original Application No. 931 of 2023** deserves to be partly allowed, hence **partly allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The first disability of the applicant is held as NANA as has been opined by the RMB. The second, third, fourth and fifth disabilities are held as aggravated by Army service. The applicant is entitled to get disability element @50% 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 element to the applicant @50% for life which would stand rounded off to 75% 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.

20. No order as to costs.

(Vice Admiral Atul Kumar Jain)  
Member (A)

(Justice Anil Kumar)  
Member (J)

Dated : 22 January, 2025

AKD/-