

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)**

ORIGINAL APPLICATION No.513 of 2020

Monday, this the 15th day of November, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

IC-40503N – Col. Ramender Veer Vikram Shah Jagati (Retd.) S/o Late H.C.S. Jagati, Resident of Flat No. 108, Nanda Homes, Near D.A.V. Public School, Kamalwanganja Road, Himmatpur Talla, Post Office Kusumkhera, Haldwani, Uttarakhand-263139.

..... **Applicant**

Ld. Counsel for the Applicant : **Shri Kishore Rai**, Advocate.

Versus

1. Union of India, Ministry of Defence, through its Secretary, South Block, New Delhi-110011.
2. P.C.D.A. (P), Allahabad, Uttar Pradesh.
3. Additional Dte. Gen. Personnel Services, Adjutant General’s Branch, IHQW of MoD (Army), Room No. 11, Plot No. 108 (West), Brassey Avenue, Church Road, New Delhi-110001.
4. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi-110011.

..... **Respondents**

Ld. Counsel for the Respondents. : **Shri Rajesh Sharma**, Advocate
Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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. A direction to quash the order dated 04.10.2018 passed by respondent No. 3 (contained as Annexure No. 6 to this original application) or to*
- ii. A direction to grant the disability pension to the applicant from the date of his retirement i.e. 31.03.2014 along with rounding off to the tune of 50% in respect of the disability Primary Hypertension conceded the disability as attributable to or aggravated by military service.*
- iii. To summon the entire records of the applicant pertaining to computation of his disability pension.*
- iv. Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.*

2. Briefly stated, applicant was commissioned in the Indian Army on 12.06.1982 and was retired on 31.03.2014 in Low Medical Category on attaining the age of superannuation. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Ranikhet on 08.10.2013 assessed his disabilities (i) **‘BILATERAL SENSORINEURAL DEAFNESS PERMANENT’** @40% for life and (ii) **‘PRIMARY HYPERTENSION’** @30% for life, **composite disabilities @60% for life** and opined both the

disabilities to be **aggravated** by service. The claim for grant of disability element of disability pension for the first disability @40% was granted by the respondents vide letter dated 17.11.2014. However, the competent authority has not approved the claim for grant of disability element of disability pension for second disability vide same letter dated 17.11.2014. The applicant preferred First Appeal which too was rejected by the respondents vide letter dated 26.05.2017. The applicant also preferred Second Appeal which too was rejected by the respondent vide letter dated 04.10.2018. 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 both disabilities were found to be aggravated to by military service by RMB which had also assessed the second disability @30% 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 the Army. Both the disabilities of the applicant were contracted during the military service and RMB has opined as aggravated by service for the disabilities. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears

thereof, as such the applicant is entitled to disability element of disability pension and its rounding off to 75%.

4. Ld. Counsel for the respondents conceded that second disability of the applicant @30% for life has been regarded as aggravated by military service by the RMB, but competent authority has rejected the claim of the applicant considering the second disability of the applicant as neither attributable to nor aggravated by military service, hence applicant is not entitled to disability element of disability pension for second disability. 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 of 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 element of disability pension?

6. This is a case where the second disability of the applicant has also been opined as Aggravated by military service by the RMB. The RMB assessed this disability @30% for life. However, the opinion of the RMB has been overruled by competent authority and this disability has been regarded as neither attributable to nor

aggravated by military service on the ground onset of this disability in peace station, therefore respondents have not granted disability element for second disability.

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 Principal Controller of Defence Accounts (Pension), Allahabad over ruling the opinion of RMB 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) it is clear that the second disability assessed by RMB cannot be overruled by competent authority, hence the decision of competent authority in this regard is void. Hence, we are of the opinion that the second disability of the applicant should also 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 Orsvs 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 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.

10. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv**

Dass vs. Union of India, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

11. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off of disability element of disability pension for second disability@30% for life. The applicant is already getting 40% disability element for his first disability. Therefore, composite assessment of both the disabilities @60% for life to be rounded off to 75% for life may be extended to the applicant. However, arrears for second disability may be restricted to three preceding years from the date of filing of the Original Application.

12. In view of the above, the **Original Application No. 513 of 2020** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension for second disability, are set aside. The second disability of the applicant is held as aggravated by Army Service as has been opined by the RMB. The applicant is entitled to get

disability element @30% for life for second disability also. The applicant is already getting 40% disability element for his first disability. Therefore, composite assessment of both the disabilities as opined by the RMB @60% for life to be rounded off to 75% for life. However, arrears for second disability may be restricted to three preceding years from the date of filing of the Original Application. The date of filing of Original Application is 09.11.2020. Accordingly, respondents are directed to issue Corrigendum P.P.O. for grant of disability element of disability pension @60% to be rounded off to 75% for life. 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

13. No order as to costs.

**(Vice Admiral AbhayRaghunathKarve) (Justice Umesh Chandra
Srivastava)Member (A) Member (J)**

Dated :15November, 2021

AKD/-