

E- Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 248 of 2018

Wednesday, this the 1st day of September, 2021

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

No. 14468338N Ex Naik Shyam Singh, S/o Shri Jarjodhan Singh,
Village – Gulawathi Khurn, Post – Jarcha, Tehsil- Dadri, District-
Gautam Budh Nagar (U.P.)

..... Applicant

Ld. Counsel for the : **Shri Rohit Kumar, Advocate**
Applicant

Versus

1. The Chief of Army Staff, DHQ PO, New Delhi.
2. Commandant cum Chief Record officer and Centre Artillery Centre and Records, Nasik Road Camp, (Maharashtra).
3. Union of India, Through, Secretary Ministry of Defence, New Delhi- 110011.

.....**Respondents**

Ld. Counsel for the : **Ms. Anju Singh,**
Respondents. **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.

- (a). *to grant disability pension to the applicant @ 50% as assessed by the Medical Board (less than 20% for life) held on 04 Jul 1997, reaffirmed buy the Medical Board held at RR Hospital New Delhi dated 12 Jan 2018 (keeping in view the Government of India Policy letter No 1 (2)/97/D (Pen-C) dated 31 Jan 2001 effective from 01 Jan 1996) with all the consequential benefits to applicant.*
- (b). *to issue any other order or direction considered expedient and in the interest of justice and equity.*
- (c). *Award cost of the petition.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army (Artillery) on 05.08.1980 and was discharged on 01.11.992 in Low Medical Category ‘BEE’ (Permanent) on fulfilling the conditions of his enrolment under Rule 13 (3) III (v) of the Army Rules, 1954. At the time of retirement, the Release Medical Board (RMB) held at Military Hospital Jhansi on 02.07.1992 assessed his disability ‘**MALARIA (MT) 084 (C) V-67**’ @ 30% for 5 years and opined the disability to be aggravated by military service. The applicant was granted disability pension for 5 years from 01.11.1992 to 01.07.1997 vide PPO No D/001585/93 dated

08.06.1993. On 04.07.1997, again Re-survey Medical Board of the applicant was held at Base Hospital, Delhi Cantt and his disability was assessed at 30% for five years from 02.07.1997 to 08.07.2002. The disability claim of the applicant was rejected by the Principal Controller of Defence Account (Pensions), Allahabad vide letter dated 13.04.1998. The applicant preferred First Appeal which too was rejected vide letter dated 19.06.2000 on the ground that the disability of the applicant has cured and has assessed at less than 20% for life. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant submitted that disability of the applicant was assessed @ 30% for five years from 01.11.1992 to 01.07.1997 and was found to be aggravated by military service vide RMB and applicant was granted disability element for the same. Re-assessment Medical Board further assessed the disability of the applicant @ 30% for five years from 02.07.1997 to 08.07.2002 and condition of the applicant was assessed as static. Medical Advisor at PCDA (Pension), Allahabad has reviewed and assessed the disability less than 20% for five years. 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. The disease of the applicant was contracted during the service. Learned counsel for

the applicant submitted that Medical Advisor at PCDA (Pension), Allahabad has no authority to reduce the percentage of disability assessed by Re-assessment Medical Board. 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 pension and its rounding off to 50% for five years and further for life.

4. Ld. Counsel for the respondents conceded that applicant was granted disability element @ 30% for five years for the period from 01.11.1992 to 01.07.1997. The applicant is getting service pension for his services rendered in the army. Disability element claim of the applicant for the period from 02.07.1997 to 08.07.2002 was rejected as Medical Advisor at PCDA (Pensions), Allahabad as a competent authority has reduced the percentage of the disability less than 20% on the ground that the disability of the applicant has cured, hence applicant is not entitled to disability pension. He further submitted that disability element beyond 08.07.2002 was not granted to the applicant as Re-assessment Medical Board assessed the disability as 'Nil'. He submitted that as per Regulations 173 of Pension Regulations for the Army 1961, Part-1, disability pension 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 and is assessed at 20% or over. In

the instant case, the disability of the applicant was reassessed at less than 20% by the competent pension sanctioning authority i.e. PCDA (P), Allahabad, therefore, claim of the applicant for grant of disability pension was rejected in terms of the policy stated above and disability of the applicant beyond 08.07.2002 was assessed as 'Nil' hence applicant has no claim beyond 08.07.2002. 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 Re-assessment Medical Board proceedings as well the records. The questions which needs to be answered are of three fold :-

- (a) Whether the Principal Controller of Defence Accounts (Pensions), Allahabad has authority to overrule the opinion of Re-assessment Medical Board?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?
- (c) Whether the applicant is entitled disability element for the period from 02.07.1997 to 08.07.2002 and further beyond 08.07.2002 being 'Nil' percentage?

6. This is a case where the disability of the applicant for the period from 02.07.1997 to 08.07.2002 was assessed at 30% and was considered as Aggravated by military service by Re-survey Medical Board. However, the opinion of the Re-assessment

Medical Board was overruled by Principal Controller of Defence Accounts (Pensions), Allahabad and the disability was regarded as less than 20%.

7. The issue of sanctity of the opinion of a Re-assessment Medical Board and its overruling by a higher formation is no more Res Integra. The Hon'ble Supreme Court 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*** in Civil Appeal No 164 of 1993, decided on 14.01.1993, we are of the considered opinion that the decision of competent authority i.e. Principal Controller of Defence Accounts (Pensions), Allahabad over ruling the opinion of Re-assessment Medical Board 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 disability assessed by Re-assessment Medical Board for the period from 02.07.1997 to 08.07.2002 for five years and marked as static cannot be reduced/overruled by Principal Controller of Defence Accounts (Pension), Allahabad and hence the decision of Principal Controller of Defence Accounts (Pensions), Allahabad is void. Hence, we are of the opinion that the disability of the applicant should be considered at 30% for five years as opined by the Re-assessment Medical Board.

9. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar and Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. Hence the applicant is eligible for the benefit of rounding off.

10. The disability percentage beyond 08.07.2020 was assessed as 'Nil' by Re-assessment Medical Board as the disability of the

applicant was cured, hence applicant is not entitled disability element beyond 08.07.2002 onwards.

11. In view of the above, the Original Application No. 248 of 2018 deserves to be partly allowed, hence partly **allowed**. The impugned orders passed by the respondents rejecting the claim of the applicant for grant of disability element for the period from 02.07.1997 to 08.07.2002 are set aside. The disability of the applicant is held at 30% for five years and considered as aggravated by Military Service. The applicant is entitled to get disability element @30% for five years from 02.07.1997 to 08.07.2002 which would be rounded off to 50%. As far as grant of disability element beyond 08.07.2002 is concerned, applicant has no claim. 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.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 01 September, 2020

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