

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 289 of 2021**

Wednesday, this the 08th ay of September, 2021

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

Ex. LD Bahadur Singh (Army No. 1041610-X) of 81 Armoured Regiment C/o 56 APO, son of Late Salik Ram, resident of Village – Ambari, Post Office – Lalgarhi, Tehsil – Etah, District Etah (UP)-207001.

..... Applicant

Ld. Counsel for the Applicant : **Shri K.K. Singh Bisht**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, Armoured Corps Records, Ahmednagar-416001.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj (U.P.)-211014.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Arvind Kumar Pandey**, 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 :-

- (a) *Issue/pass an order or direction to the respondents to quash/set aside the arbitrary and illegal order passed by Office of the PCDA (P) Allahabad, respondent No. 4 vide their letter G3/83/1668/VII dated 28.02.1984 {Annexure No. A-1(i)} rejecting the disability pension claim of the applicant.*
- (b) *Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal order forwarded by respondent No. 3 vide letter No.1041610/DP/30/Pen dated 09 March 1984 {Annexure No. A-1(ii)} rejecting the disability pension claim of the applicant.*
- (c) *Issue/pass an order or direction of appropriate nature to the respondents to grant 30% disability element from the date of discharge i.e. from 15 April 1983 for two years and thereafter to conduct Re-Survey Medical Board (RSMB) to assess further disability of the applicant and grant disability element on the basis of assessment by RSMB and to grant the benefit of rounding off of disability element w.e.f. 01.01.1996.*
- (d) *Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Indian Army 16.06.1967 and was discharged on 15.04.1983 (AN) in Low Medical Category [BEE (Permanent)] on unwilling to continue in service under Rule 13 (3) Item III (v) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at 166 Military Hospital on 07.12.1982 and assessed his disability '**COMPOUND FRACTURE TIBIA FIBULA (RT) INER**

CONDYLAR FRACTURE LOWER END FEMUR (LT) N 820, N823, E812' @30% for two years and opined the disability to be **attributable to military service** being injury sustained while performing military duty i.e. Despatch Rider. The disability claim of the applicant was however rejected by the Principal Controller of Defence Account (Pensions), Allahabad vide letter dated 28.02.1984 on the ground that the disability of the applicant was neither attributable to nor aggravated by military service and the same was communicated to the applicant vide letter dated 09.03.1984. The applicant preferred First Appeal which too was rejected by the respondents vide letter dated 29.08.2017. The applicant preferred another petition dated 21.06.2020 which too was rejected vide letter dated 17.07.2020. 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 disability was found to be **attributable to military service** vide RMB dated 07.12.1982 which had also assessed the disability @30% for two 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/injury of the applicant was contracted during the service. 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%.

4. Ld. Counsel for the respondents conceded that disability of the applicant @30% for two years has been regarded as **attributable to military service** the RMB, but pension sanctioning authority i.e. Principal Controller of Defence Accounts (Pensions), Allahabad has rejected the claim of the applicant on the ground that the disability of the applicant is neither attributable to nor aggravated by military service, hence applicant is not entitled to disability pension. 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 Release Medical Board proceedings as well the records and we find that the questions which need to be answered are of two folds:-

- (a) Whether the Principal Controller of Defence Accounts (Pensions), Allahabad has authority to overrule the opinion of RMB?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. This is a case where the disability of the applicant has been held as attributable to military service by the RMB which was held on 07.12.1982. The RMB assessed the disability @30% for two years. However, the opinion of the RMB held on 07.12.1982 has been overruled by Principal Controller of Defence Accounts (Pensions), Allahabad and the disability has been regarded as neither attributable to or aggravated by military service being constitutional in nature and not related to 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 i.e. Principal Controller of Defence Accounts (Pensions), Allahabad over ruling the opinion of RMB held on 27.01.1999 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 RMB on 07.12.1982 cannot be reduced/overruled by Principal Controller of Defence Accounts (Pension), Allahabad, 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 as attributable to military service as has been opined by the RMB.

9. As for as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding for period in question i.e. two years from 15.04.1983.

10. Since the applicant's RMB was valid for two years w.e.f. 15.04.1983, hence, the respondents will now have to conduct a fresh Re-Survey Medical Board for him to decide his future eligibility to disability pension.

11. In view of the above, the Original Application No. 289 of 2020 deserves to be allowed, hence **allowed**. The impugned orders dated 28.02.1984, 09.03.1984, 29.08.2017 and 17.07.2020, rejecting the claim for grant of disability element, are set aside. The disability of the applicant is held as attributable to Military Service as has been opined by RMB dated 07.12.1982. The applicant is entitled to get disability element @30% for two years from the next date of his discharge. The respondents are directed to grant disability element to the applicant @30% for two years which would stand rounded off to 50% for two years from the next date of his discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension. 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 : 08 September, 2021

AKD/-