

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 646 of 2020**

Friday, this the 03rd day of September, 2021

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

1568057M L/Nk Shiv Kumar, S/o Shri Ramesh Chand, R/o Village – Umari, PO – Sirsaganj, District – Firozabad (UP).

..... Applicant

Ld. Counsel for the : **Shri R.N. Tripathi**, Advocate
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi.
2. OIC, The Records Office of the Bombay Engr Group and Centre, Kirkee.
3. PCDA (P), Prayagraj (Allahabad).

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**, Advocate
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) *An order or direction to the respondents for paying the Disability Pension to the applicant since the date of*

the discharge from the service (30.06.1999) with all the arrears as applicable and also with the suitable interest.

- (b) To allow the OA with the costs.*
- (c) Any other or further order or direction which this Hon'ble Court may deem just, fit and proper in the circumstances of the case and in the interest of justice.*

2. Briefly stated, applicant was enrolled in the Indian Army 25.08.1983 and was discharged on 30.06.1999 (AN) in Low Medical Category [CEE (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 Command Hospital, Western Command, Chandimandir on 27.01.1999 and assessed his disability '**COMMUNATED FRACTURE PATELA (RT) (OPTD)**' @20% for two years and opined the disability to be **attributable to** military service being injury sustained in peace area while on military duty. The disability claim of the applicant was however rejected by the Principal Controller of Defence Account (Pensions), Allahabad vide letter dated 27.07.2000 on the ground that the disability of the applicant was neither attributable to nor aggravated by military service and constitutional in nature and not related to service. The applicant was informed the said facts vide letter dated 10.08.2000. 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 27.01.1999 which had also assessed the disability @20% 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 contacted 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 @20% for two years has been regarded as **attributable to** 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. However, in terms of IHQ of MoD (Army) letter No.B/39022/Misc/AG/PS-4 (L)/BC dated 25.04.2011 the applicant became eligible for grant of disability element @20% for two years w.e.f. 30.06.1999 to 29.06.2001 and further in accordance with

para 7.2 of Government of India letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 read in conjunction with para 4.1 the applicant is eligible for grant of rounding off benefit @50%. 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 27.01.1999. The RMB assessed the disability @20% for two years. However, the opinion of the RMB held on 27.01.1999 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) as well as IHQ of MoD (Army) letter dated 25.04.2011 it is clear that the disability assessed by RMB on 27.01.1999 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. 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 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. 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."*

10. 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)*** and Government of India letter dated 31.01.2001, we are of the considered view that benefit of rounding off of disability pension @ 20% for two to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge.

11. 9. Since the applicant's RMB was valid for two years w.e.f. 01.07.1999, hence, the respondents will now have to conduct a fresh Re-Survey Medical Board for him to decide his future eligibility to disability pension.

12. In view of the above, the Original Application No. 646 of 2020 deserves to be allowed, hence **allowed**. The impugned orders dated 27.07.2000 and 10.08.2000, annexed as Annexure Nos. R-3 and R-4 of Counter Affidavit, are set aside. The disability of the applicant is held as attributable to Military Service as has been opined by RMB dated 27.01.1999. The applicant is entitled to get disability element @20% for life which would be rounded off to 50% for two years from the next date of his discharge. The respondents are directed to grant disability element to the applicant @20% 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.

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 03 September, 2021

AKD/-