

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Court No -1****Transferred Application No. 05 of 2019****Wednesday, this the 22 Day of September 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Rohitaswa Verma Son of Shri Hardev Singh Verma, resident
of Post Office-Bansa, District: Hardoi. (UP).

..... Petitioner

Ld. Counsel for the : **Shri Yashpal Singh,**
Petitioner **Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, North Block, Rashtriya Pati Bhawan, New Delhi.
3. Officer In-Charge Record, Brigade of Guards Kamptee.
4. Commanding Officer Brigade of Guards, C/o 56 APO.
5. Chief Controller of Defence Account (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma**
Respondents. **Atal,**
Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. Initially Writ Petition No. 5724 (SS) of 1994 was filed before the Hon’ble Allahabad High Court which was transferred to this Tribunal and was renumbered as T.A. No. 5 of 2019. By means of this T.A. the petitioner has prayed the following reliefs:-

(i) *to issue writ, order and direction in the nature of Certiorary may kindly be passed quashing the discharge order dated 20-03-84 contained as Annexure No.- I to the petition.*

(ii) *to issue writ, order or direction be passed in the nature of mandamus Commanding the opp. Party to grant pensionary benefit to the petitioner.*

(iii) *to issue writ, order and direction be passed in the nature of Mandamus directing the opposite parties to grant Provident Fund, gratuity etc. to the petitioner.*

(iv) *to issue writ, order or direction be passed in the consequence of the case.*

(v) *Any other relief or reliefs deemed fit and proper by the Hon’ble Court be passed in the consequence of the case.*

(vi) *Award the proceeding cost to the petitioner.*

2. The undisputed factual matrix on record is that the petitioner was enrolled in Indian Army on 18.03.1983 and was discharged from service on 29.12.1991 in low medical category CEE (Permanent) before completion of terms of engagement. At the time of discharge Release Medical Board held at 167 Military Hospital assessed disability “**AVM OCCIPITAL RT REGION (OPTE) 437-v-67**” @ 30% for life and considered as aggravated by the military service. Disability of the petitioner was reduced to less than 20% by PCDA (P), Allahabad and his claim for grant of disability pension was rejected by the respondents vide letter dated 20.07.1992 being less than 20%. Being aggrieved, the petitioner has approached this Tribunal for the grant of disability pension. During the course of argument, learned counsel for the petitioner submitted that he restricts his prayer only to grant of disability pension.

3. Learned counsel for the petitioner submitted that since the petitioner was enrolled in the army in medically fit condition and, thereafter, he was discharged from service in Low Medical Category assessed as 30% for life and considered as aggravated by military service. After completing the training, the petitioner was selected in boxing team. He was participating in inter brigade boxing championship where the bone of his

right ear was broken and he suffered severe head injury. Due to serious injuries, he underwent surgery and developed eye sight problem. Finally he was recommended for discharge from service on medical grounds. Learned counsel for the petitioner pleaded that the disability of the petitioner was wrongly reduced to less than 20% by the PCDA (P), Allahabad which resulted in rejection of claim of disability pension to the petitioner. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such, the petitioner is entitled to disability pension and its rounding off to 50%.

4. Learned counsel for the respondents has not disputed that petitioner suffered disability to the extent of 30% for life due to injury suffered by the petitioner at the time of participating in boxing championship, but submitted that PCDA (Pension) has reduced the percentage of disability as less than 20%, therefore, in terms of Para 179 of the Pension Regulations for the Army, 1961 (Part-I), the claim of the petitioner for the grant of disability pension has correctly been rejected. He pleaded for dismissal of the Transferred Application.

5. We have heard Ld. Counsel for the petitioner as also Ld. Counsel for the respondents. The questions which needs 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 petitioner is entitled for the benefit of rounding off the disability pension?

6. This is a case where the disability of the petitioner was assessed @ 30% permanent and disability was considered as Aggravated by military service by the RMB. However, the opinion of the RMB was overruled by Principal Controller of Defence Accounts (Pensions), Allahabad and the disability was reduced to less than 20% without assigning any reason.

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 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 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 disability assessed by RMB 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 petitioner should be considered as 30% for life as 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. In view of the above, the Transferred Application deserves to be allowed, hence **allowed**. The impugned order passed by the respondents rejecting the claim of the petitioner for grant of disability pension is set aside. The petitioner was discharged from service on 30.12.1991 and as per Policy Letter No. 1(2)/97/D (Pen-C) dated 31.01.2001 petitioner is entitled rounding off disability pension w.e.f. 01.01.1996. Therefore,

petitioner shall be entitled disability pension @ 30% upto 31.12.1995 from the next date of discharge. Further petitioner shall be entitled disability pension @ 30% which shall be rounded of to 50% for life w.e.f. 01.01.1996. 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.

11. No order as to costs.

12. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 22 September, 2021

Ukt/-