

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 974 of 2022**Wednesday, this the 12<sup>th</sup> day of April, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Atul Kumar Jain, Member (A)”**No. 14383281 M Ex. TS Nk. Sohan Pal, S/o Sri Indra Pal, R/o  
Village Sisauli, Tehsil Budhana, District – Muzaffar Nagar.

..... Applicant

Ld. Counsel for the : **Shri B.B. Tripathi**, Advocate.  
Applicant **Shri Amit Verma**, Advocate

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Commanding Officer, Sena Vayu Raksha Abhilekh, 152 Air Defence Records, PIN 908803, C/o 99 APO.
3. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad-211014.

.....**Respondents**Ld. Counsel for the : **Shri Yogesh Kesarwani**, 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) *Issue an order, direction certiorari quashing the order dated 12.02.2022 passed by respondent No. 2*

*communicated vide letter dated 14 February 2022 contained in Annexure No. 1 and order dated 03.10.2021, passed by respondent No. 3 in so far as it relates for not granting disability pension with all consequential benefits.*

- (b) Issue an order, direction and command to the respondents to pay the disability pension to the applicant by issuing PPO in favour of the applicant w.e.f. 1<sup>st</sup> June 2001 and also to pay with all consequential benefits without reference to the orders, Impugned in the Application.*
- (c) Issue such other order / direction which may be deemed just and proper in the circumstances of the case.*
- (d) Allow the Original Application with cost against the respondents in view of the facts and circumstances legal provisions and Grounds raised in the Application.*

2. Briefly stated, applicant was enrolled in Indian Army on 18.05.1984 and was discharged on 31.05.2001 in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13(3) Item III (i) of the Army Rules, 1954. At the time of retirement from service, the Release Medical Board (RMB) held at INHA Nivarini, Chilka on 29.03.2001 assessed his disabilities (i) "SUB NORMAL VISION B/E WITH RIGHT PARTIAL HAEMANOPIA ICD NO. 368" @15-19% for two years as neither attributable to nor aggravated by military service (NANA) and (ii) "**ICHAEMIC HEART DISEASE ICD NO. 411**" @30% for two years as aggravated by military service, **composite disabilities @30% for two years**. The

initial claim of disability was rejected by the Principal Controller of Defence Accounts (Pensions), Allahabad on 14.01.2002 which was communicated to the applicant vide letter dated 19.02.2002. The applicant preferred his grievance through CPGRAM dated 11.08.2021 for disability pension which too was rejected vide letter dated 03.09.2021. The applicant again preferred his grievance through CPGRAM dated 29.09.2021 which too was rejected vide letter dated 26.11.2021. The applicant preferred application dated 29.09.2021 which too was rejected vide letter dated 10.12.2021 which was communicated to the applicant vide letter dated 14.02.2022. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian 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 second disease of the applicant has been regarded as aggravated by military service. The first disease of the applicant was also contracted during the service, hence it is also attributable to and aggravated by Military Service. He further submitted that Principal Controller of Defence Accounts (Pension), Allahabad has no authority to overrule the opinion of RMB with regard to second disability. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar

cases, as such the applicant be granted disability element of disability pension and its rounding off to 50%.

4. Ld. Counsel for the respondents conceded that the first disability @15-19% has been regarded as NANA by the RMB and although the second disability of the applicant @30% for two years has been regarded as **aggravated by** 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 element of 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 records and we find that the questions which need to be answered are of three folds:-

- (a) Whether the Principal Controller of Defence Accounts (Pensions), Allahabad has authority to overrule the opinion of RMB with regard to second disability?
- (b) Whether the first disability of applicant is also attributable to or aggravated by military service?
- (c) 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 been held as aggravated by military service by the RMB. The RMB assessed the disability @30% for two years. However, the opinion of the RMB has been overruled by Principal Controller of Defence Accounts (Pensions), Allahabad and the second disability has been regarded as neither attributable to or aggravated by military 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 29.03.2001 with regard to second disability 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 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 second disability of the applicant should be considered as aggravated by military service as has been opined by the RMB.

9. Further, the law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

*"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).*

*29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].*

*29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).*

*29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)].  
[pic]*

*29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].*

*29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."*

10. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the first disability **“SUB NORMAL VISION B/E WITH RIGHT PARTIAL HAEMANOPIA ICD NO. 368”** to be neither attributable to nor aggravated (NANA) by military service.

The first disability was firstly detected on 12.07.1995 whereas the applicant was enrolled in the Army on 18.05.1984 i.e. after about ten years of military service. We are therefore of the considered opinion that the reasons given in RMB for declaring disease as NANA are brief and cryptic in nature. Therefore, benefit of doubt in these circumstances should be given to the applicant in view of the law settled on this matter by ***Dharamvir Singh vs Union of India & Ors*** (supra) and the first disability of the applicant should be considered as aggravated by military service, as such the applicant is entitled for the disability pension for two years from the next date of his discharge.

11. 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 10<sup>th</sup> 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."*

12. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War

Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

13. 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)*** as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @ 30% for two years to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge.

14. Since the applicant's RMB was valid for two years from the next date of applicant's discharge, hence, the respondents will now have to conduct a fresh Re-Survey Medical Board for him to decide his future eligibility to disability pension.

15. In view of the above, the **Original Application No. 974 of 2022** deserves to be allowed, hence, **allowed**. The impugned orders, rejecting the applicant's claim for the grant of disability element of disability pension, are set aside. Both the disabilities of the applicant are held as aggravated by military service. The applicant is entitled to get disability pension @30% for two years to be rounded off to 50% for two years from the next date of discharge. The respondents are directed to grant disability element of disability pension to the applicant @30% for two years to be 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 element of disability pension. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

No order as to costs.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated : 12 April, 2023

AKD/-