

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 1297 of 2023**Tuesday, this the 09th day of April, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

MR - 08063X Lt. Col. Mukesh Kumar (Retd.), S/o Shri Braj Nandan Prasad, Residence of Near Petrol Pump, Ashik Bagh, Bilhaur, District – Kanpur, Uttar Pradesh -209202.

..... ApplicantLd. Counsel for the Applicant : **Ms. Upasna Mishra**, Advocate
Shri Raj Kumar Mishra, Advocate
Shri Pradeep Kumar Mishra, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi -110011.
2. The Chief of Army Staff, Integrated HQ of MoD (army), New Delhi -110011.
3. Addl. Dte. Gen. of Manpower, (Policy & Planning) /MP 5(B), Adjutant General’s Branch, IHQ of Ministry of Defence (Army), Wing No.3, New Delhi -110001.
4. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Near Sadar Bazar, Prayagraj, Uttar Pradesh -211014.

.....RespondentsLd. Counsel for the Respondents. : **Shri R.C. Shukla**, Advocate
Central Govt. Standing Counsel
Assisted by **Major Uma Yadav**,
Departmental Representative

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, 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 issue/pass an order or direction of appropriate nature to the respondents to set aside /quash the impugned order Rejection of initial pension claim vide No. MR-08063X/MPRS(O)/72/23/AG/MPORO dated 16.05.2023 by respondent and letter No. MR 08063X/MPRS (O)/AMC3/2023 dated 24.05.2023 of DGMS along with Proceeding Release Medical Board dated 13.03.2023 inasmuch as these declare the disability of “Primary Hypertension ICD I10.0 and Diabetes Mellitus Type -2 E 11.9” suffered by the applicant as not attributable to service but aggravated by service along with rejection of First Appeal vide No. MR-08063X/MPRS/(O) /NE/275/2023 /AG/PS-8 dated 01.09.2023.*
- (b) *To issue/pass an order or direction of appropriate nature to the respondents directing to grant disability pension from the date next to the date of discharge i.e. 12.04.2023 and interest thereon at the rate of 18% per annum.*
- (c) *Issue/pass an order or direction to the respondents to round off the disability pension from 58% for life to 75% for life in terms of benefit of broad-banding as held in Ram Avtar’s case.*
- (d) *Issue /pass any other or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.*
- (e) *Allow this application with exemplary costs.*

2. Briefly stated, applicant was commissioned in the Army Medical Corps of Indian Army 27.02.2004 and prematurely retired at his own request on 11.04.2023 (AN) in Low Medical Category. At the time of retirement from service, the Release Medical Board

(RMB) held at Command Hospital (Northern Command) on 03.03.2023 assessed his disabilities (i) '**ESSENTIAL (PRIMARY) HYPERTENSION (I 10)**' @40% for life (ii) '**TYPE-2 DIABETES MELLITUS (E11.9)**' @30% for life, **composite disabilities @58% for life** and opined the disabilities to be **Aggravated by** military service. The disability claim of the applicant was however rejected by the Competent Authority on the ground that the disabilities of the applicant were neither attributable to nor aggravated by military service vide letter dated 16.05.2023 which was communicated to the applicant vide letter dated 24.05.2023. The applicant preferred first Appeal dated 19.06.2023 which too was rejected vide letter dated 01.09.2023 which was communicated to the applicant vide letter dated 04.10.2023. 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 disabilities were found to be **aggravated by** military service vide RMB which had also assessed the composite disabilities @58% for life. He further pleaded that the competent authority has no authority to overrule the opinion of the RMB. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension and its rounding off to 75%.

4. Ld. Counsel for the respondents conceded that composite disabilities of the applicant @58% for life have been regarded as **aggravated by** the RMB, but pension sanctioning authority i.e.

Competent Authority has rejected the claim of the applicant on the ground that the disabilities of the applicant are 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 records and we find that the questions which need to be answered are three folds:-

- (a) Whether the Competent Authority has authority to overrule the opinion of RMB?
- (b) Whether the applicant is entitled to disability element of disability pension being a case of prematurely retired on his own request?
- (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 disabilities of the applicant have been held as aggravated by military service by the RMB. The RMB assessed the composite disabilities @58% for life. However, the opinion of the RMB has been overruled by the Competent Authority and the disabilities have 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 over ruling the opinion of RMB held on 03.03.2023 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 the Competent Authority, hence the decision of Competent Authority is void. Hence, we are of the opinion that both the disabilities of the applicant should be considered as aggravated by military service as has been opined by the RMB.

9. Government of India, Ministry of Defence letter No. 16(5)/2008/D(Pen/Policy) dated 29.09.2009 stipulates that *“In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntarily or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity.”* In view of aforesaid letter, the applicant is entitled for grant of disability element of disability pension even if he has been prematurely retired on his own request.

10. 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 invalidated 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."*

11. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017/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.

12. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Union of India and Ors vs Ram Avtar & (supra)*** as well as Government of India, Ministry of Defence letter No. 17(01)/2017/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @58% for life to be rounded off to 75% for life may be extended to the applicant from the next date of his retirement.

13. In view of the above, the **Original Application No. 1297 of 2023** deserves to be allowed, hence **allowed**. The impugned

orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. Both the disabilities of the applicant are held as aggravated by Military Service as has been opined by RMB. The applicant is entitled to get disability element @58% for life which would be rounded off to 75% for life from the next date of his retirement. The respondents are directed to grant disability element to the applicant @58% for life which would stand rounded off to 75% for life from the next date of his retirement. 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.

14. No order as to costs.

15. Major Uma Yadav, Departmental Representative for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 09 April, 2024

Ashok/AKD/-