

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 394 of 2021**Monday, this the 20th day of December, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Vindrawan (No. 14217970 Ex. Hav.), S/o Late Baij Nath, R/o House No. 260, Mohalla Lahariya Purwa, Post Orai, District – Jalaun, PIN-285001.

..... ApplicantLd. Counsel for the : **Shri Ashok Kumar**, Advocate
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, Delhi-110011.
2. The Incharge Records, Signals, PIN-908770, C/o 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

..... RespondentsLd. Counsel for the : **Ms. Prerna Singh**, 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 :-

- (i) *This Hon’ble Court may graciously be pleased to quash impugned order dated 16.9.2019 (Annexure No. A-1) passed by the respondent no. 2.*

- (ii) *This Hon'ble Court may graciously be pleased to direct the respondents to refer the case of applicant for Re-Survey Medical Board towards the disability '**HAEMARTHROSIS LT KNEE**' and if said disability still found the respondents may be directed to release the disability pension along with its arrears and interest to the applicant w.e.f. 30.08.2001 for life.*
- (iii) *This Hon'ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.*
- (iv) *Award costs to the applicant.*

2. Briefly stated, applicant was enrolled in the Corps of Signals of Indian Army 18.03.1972 and was discharged on 31.12.1994 (AN) in Low Medical Category under Rule 13 (3) Item III (v) read in conjunction with sub-rule 13(2A) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Allahabad on 16.12.1994 assessed his disability '**HAEMO ARTHROSIS LT KNEE 716**' @30% for two years and opined the disability to be **attributable to** military service. Accordingly, the applicant was granted disability element of disability pension vide P.P.O. dated 29.11.1995. The Re-Survey Medical Board (RSMB) held at Base Hospital, Lucknow on 30.08.1996 assessed his disability @30% for ten years with effect from 30.08.1996. The disability claim of the applicant was however rejected by the Principal Controller of Defence Account (Pensions), Allahabad vide letter dated 19.02.1997 on the ground that it has been reduced to 11 – 14 % i.e. less than 20 for five years from 16.12.1996 to 29.08.2001 which was communicated to the applicant vide letter dated 18.03.1997. 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 which had also assessed the disability @30% for two years as attributable to military service and accordingly, he was granted disability element of disability pension. The RSMB has assessed his disability @30% for ten years but the Principal Controller of Defence Accounts (Pension), Allahabad has reduced the degree of disability @11-14% for five years. The Principal Controller of Defence Accounts (Pension) has no power to reduce the degree of disability of the applicant. He pleaded that various Benches of Armed Forces Tribunal have granted disability element pension in similar cases, as such the applicant be granted disability element of disability pension as well as arrears thereof, as such the applicant is entitled to disability element of 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 **aggravated by** the RMB, accordingly applicant was granted disability element for two years. His further submission is that although the RSMB held on 30.08.1996 has assessed the degree of the disability of the applicant @30% for ten years, but pension sanctioning authority i.e. Principal Controller of Defence Accounts (Pensions), Allahabad has rejected the claim of the applicant by reducing the degree of disability to 11-14% for five years, 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 two folds:-

- (a) Whether the Principal Controller of Defence Accounts (Pensions), Allahabad has authority to overrule the opinion of RSMB?
- (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. The RSMB held on 30.08.1996 assessed the applicant's disability @30% for ten years. However, the opinion of the RSMB has been overruled by Principal Controller of Defence Accounts (Pensions), Allahabad and the disability has been reduced to @11-14% for five years.

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/RSMB 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 degree of

disability of the applicant should be considered @30% for ten years as has been opined by the RSMB.

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 invalided 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)***, we are of the considered view that benefit of rounding off of disability element of disability pension @ 30% for ten years to be rounded off to 50% for ten years may be extended to the applicant.

11. Since the applicant's RSMB was valid for two years w.e.f. 30.08.1996, hence, the respondents will now have to conduct a fresh Re-Survey Medical Board for him to decide his future eligibility to disability element of disability pension.

12. In view of the above, the **Original Application No. 394 of 2021** 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. The disability of the applicant is held as aggravated by Military Service as has been opined by RSMB. The applicant is entitled to get disability element @30% for ten years which would be rounded off to 50% for ten years 30.08.1996. The respondents are directed to grant disability element to the applicant @30% for ten years which would stand rounded off to 50% for ten years from 30.08.1996. 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. 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 : 20 December, 2021

AKD/-