

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 319 of 2022**Monday, this the 12th day of December, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 51623-Z Cdr. Santosh Kumar (Retd), S/o Col. Kameshwar Chaudhary (Retd.), R/o 5/305, Viram Khand, Gomti Nagar, Lucknow (U.P)-226016.

..... Applicant

Ld. Counsel for the Applicant : **Shri D.S. Tiwari**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110001.
2. Chief of the Naval Staff, IHQ MoD(N), New Delhi, Pin-110011.
3. DGMS (N), IHQ MoD (Navy), Sena Bhawan, New Delhi-110066.
4. Directorate of Pay & Allowances, IHQ MoD (N), Room No. 108, Naval HQ Annexe, Talkatora Stadium, New Delhi-110004.
5. Directorate of Personnel, IHQ MoD (N), Sena Bhawan, New Delhi-110011.

.....Respondents

Ld. Counsel for the Respondents. : **Ms. Anju Singh**, Advocate
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) *The Hon’ble Tribunal may be pleased to set aside the impugned rejection orders dated on 29.10.2020, 1st & 2nd appeals dated 06.04.2021, 10.03.2022 (Annexure A1,A2 &A3).*
- (II) *The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension/ disability element with effect from the date of discharge i.e. 31.07.2019 along with Broad Banding to 75% & its arrears with interest thereon at the rate of 12% per annum.*
- (III) *Any other appropriate order 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.*
- (IV) *cost of the application.*

2. Briefly stated, applicant was initially commissioned in the Indian Navy 01.01.1999 and prematurely retired on 31.07.2019 (AN) in Low Medical Category. At the time of retirement from service, the Release Medical Board (RMB) held at Mumbai Naval Dockyard Dispensary on 04.05.2019 assessed his disabilities (i) **‘TYPE-@ DIABETES MELLITUS ICD NO E.11’** @30% as aggravated by service, (ii) **‘AUTOIMMUNE**

THYROIDITIS WITH PRIMARY HYPOTHYROIDISM ICD E 03.8' @15% as aggravated by service and (iii) '**PRIMARY OPEN ANGLE GLAUCOMA BOTH EYES ICD NO.H40'** @10% as neither attributable to nor aggravated by naval service, **composite disabilities @50% for 05 years.** The disability claim of the applicant was however rejected by the competent authority i.e. Principal Integrated Financial Advisor (PIFA) (Navy) vide letter dated 29.10.2020 on the ground that the first and second disabilities of the applicant was neither attributable to nor aggravated by naval service. The applicant preferred First Appeal which too was rejected vide letter dated 06.04.2021. The applicant also preferred Second Appeal which too was rejected vide letter dated 10.03.2022. 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 first and second disabilities were found to be aggravated by service vide RMB which had also assessed the disabilities @30% and @15% respectively. He further pleaded that at the time of commission, the applicant was found mentally and physically fit for service in the Indian Navy and there is no note

in the service documents that he was suffering from any disease at the time of commission in Navy as such the third disability is also attributable to or aggravated by service. He further submitted that Principal Integrated Financial Advisor (PIFA) (Navy) has no authority to overrule the opinion of 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 the first and second disabilities of the applicant @30% and @15% respectively have been regarded as **aggravated by** the RMB, but pension sanctioning authority i.e. Principal Integrated Financial Advisor (PIFA) (Navy) has rejected the claim of the applicant on the ground that the disability of the applicant is neither attributable to nor aggravated by naval service and third disability has been regarded as NANA by the RMB. He further pleaded that the applicant has been discharged from service at his own request. Hence, as per Regulation 28 of the Navy Pension Regulations, 1964 the 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 four folds:-

- (a) Whether the Principal Integrated Financial Advisor (PIFA) (Navy) has authority to overrule the opinion of RMB?
- (b) Whether the third disability of the applicant is also attributable to or aggravated by Naval Service?
- (c) Whether the applicant is entitled to disability pension being a case of discharge on his own request?
- (d) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. This is a case where the first and second disabilities of the applicant has been held as aggravated by service by the RMB.

The RMB assessed the first and second disabilities @30% and @15% respectively and the third disability has been held @10% as NANA, composite disabilities @40% for five years. However, the opinion of the RMB has been overruled by Principal Integrated Financial Advisor (PIFA) (Navy) and the first and second disabilities have also been regarded as neither attributable to or aggravated by naval 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 Principal Integrated Financial Advisor (PIFA) (Navy) 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) 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 Integrated Financial Advisor (PIFA) (Navy)/PCDA, hence the decision of Principal Integrated Financial Advisor (PIFA) (Navy) is void. Hence, we are of the opinion that the first and second disabilities of the applicant should be considered as aggravated by naval service as have been opined by the RMB.

9. 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 third disability '**PRIMARY OPEN ANGLE GLAUCOMA BOTH EYES ICD NO.H40**' is neither attributable to nor aggravated (NANA) by service on the ground of this

disability is secondary to first and second disabilities, therefore, applicant is not entitled to disability element of disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability element of disability pension for the third disability to applicant is cryptic, not convincing and doesn't reflect the complete truth on the matter. The applicant was commissioned in Indian Navy on 01.01.1999 and the disability has started after more than 19 years of Naval service i.e. in April, 2018 respectively. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra), and the third disability of the applicant should also be considered as aggravated by naval service.

11. 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 discharged on his own request on compassionate grounds.

12. 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.”

13. 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.

14. 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 @50% for five years to be rounded off to 75% for five years may be extended to the applicant from the next date of his retirement.

14. Since the applicant's RMB will be valid for five years w.e.f. 31.07.2019, hence, the respondents will have to conduct a fresh RSMB for him to decide his future eligibility to disability pension after completion of five years.

15. In view of the above, the **Original Application No. 319 of 2022** to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. All the disabilities of the applicant are held as aggravated by Naval Service. The applicant is entitled to get disability element @50% for five years which would be rounded off to 75% for five years from the next date of his retirement. The respondents are directed to grant disability element to the applicant @50% for five years which would stand rounded off to 75% for five years from the next date of his retirement. 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 after completion of five years. 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.

16. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 12 December, 2022

AKD/-