

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 150 of 2023**Saturday, this the 16<sup>th</sup> day of December, 2023**“Hon’ble Mr. Justice Anil Kumar, Member (J)”****“Hon’ble Lt. Gen. Anil Puri, Member (A)”**

Col. (Dr.) Ritu Bakshi (Retd.), MR – 06177K, Med. W/o Col. Nand Kishore Subhedar (Retd.), Resident of House No. 4T-704, AWHO Society, Gurjinder Vihar, Pocket 5, CHI 2, Greater Noida, Gautam Budh Nagar, UP -201310.

**..... Applicant**

Ld. Counsel for the Applicant : **Wg. Cdr. S. N. Dwivedi (Retd.)**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi -110001.
3. Additional Directorate General of Personnel Services / AG’s Branch/PS-4 (1<sup>st</sup> Appeal), Integrated Headquarters of Ministry of Defence (Army), 5<sup>th</sup> Floor, ‘A’ Block, Room No. 527, Defence Offices Complex, KG Marg, New Delhi -110001.
4. Integrated Headquarters of Ministry of Defence (Army), Adjutant General’s Branch, DGMS (Army)/ MPRS (O), 3<sup>rd</sup> Floor, ‘A’ Block, Room No. 334/335, Defence Offices Complex, KG Marg, New Delhi -110001.
5. Principal Controller of Defence Accounts (Pension), Draupdi Ghat, Allahabad (U.P)

**.....Respondents**

Ld. Counsel for the Respondents. : **Ms. Appoli Srivastava**, Advocate  
Central Govt. Standing Counsel  
Assisted by **Major Danish Farooqui**,  
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 to set aside the impugned order dated 31.10.2022 (annexure A-1) by which the First Appeal against non-grant of disability element to the applicant, has been rejected.*
- (b) *To issue/pass any order or direction to declare the IDs of Primary Hypothyroidism, Obesity, Primary Hypertension with Hypertension Retinopathy, Diabetes Mellitus Type-2, Hyper Lipidaemia, Thalassemia Minor, Calcific Tendonitis Supraspinatus Tendon B/L Shoulder (Lt>Rt) and PIVD L4-5 as attributable /aggravated qualifying for disability pension @76.02% for life, rounded up to 100% as per policy issued vide GOI, Ministry of Defence letter No. 17(01)/2017/D (Pen/policy) dated 23.01.2018 and the same circulated vide PCDA(P) Allahabad Circular No. 596 dated 09.02.2018.*
- (c) *To issue/pass any other order or direction to respondents to pay the disability element with effect from 01.11.2022 for life and pay the accrued arrears.*
- (d) *To issue/pass any other order or direction that this Hon’ble Tribunal may deem fit, just and proper under the circumstances of the case.*

2. Briefly stated, applicant was commissioned in the Army Medical Corps of Indian Army on 09.03.1990 and retired on 31.10.2022 (AN) in Low Medical Category on attaining the age of retirement after rendering 32 years and 08 months of service. At the time of retirement from service, the Release Medical Board (RMB) held at Base Hospital, Delhi

Cantt. on 28.05.2022 assessed her disabilities (i) **'PRIMARY HYPOTHYROIDISM (E03.9)'** @10%, (ii) **'OBESITY (E-66.0)'** @05%, (iii) **'PRIMARY HYPERTENSION WITH HYPERTENSION RETINOPATHY (I 10.0)'** @ 40%, (iv) **'TYPE 2 DIABETES MELLITUS (E 11.9)'** @ 20%, (v) **'HYPERLIPIDAEMIA (E 78.5)'** @05%, (vi) **'THALASSEMIA MINOR (D 56.3)'** @ 10%, (vii) **'CALCIFIC TENDONITIS SUPRASPINATUS TENDON B/L SHOULDER (LT>RT) (M75.3)'** @15% and (viii) **'PIVD L4-5(M51.06)'** @20%, **composite disabilities @76.02 for life** and opined the disabilities Nos. (i) to (vii) to be neither attributable to nor aggravated (NANA) by service and disability No. (viii) to be **aggravated by service**. The applicant's claim for grant of disability pension was rejected vide letter dated 10.08.2022. The applicant preferred First Appeal which too was rejected vide letter dated 31.10.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of commissioning, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of commissioning in Army. Although the disability No. (viii) i.e. **"PIVD L-4-5 (M 51.06"** @20% has been regarded as aggravated by service by the RMB but without having authority to over the opinion of RMB, the competent authority has not approved the claim for the applicant for the grant of disability element of disability pension for this disease also. The other diseases of the applicant were also contracted during the service, hence they are also

attributable to and aggravated by Military Service. 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 100%.

4. On the other hand, Ld. Counsel for the respondents contended that although the disability No. (viii) of the applicant has been regarded as aggravated by service and disabilities Nos. (i) to (vii) have been regarded as NANA but the pension sanctioning authority has stated that disabilities IDs “do not fulfil the eligibility conditions as laid down in existing rules/provisions for the grant of disability element and the claim for the same is ‘NOT APPROVED’”. He further submitted that as per Regulation 37(a) of Pension Regulations for the Army, 2008 (Part-I) which states that *“an officer who retires on attaining of the age of retirement or on completion of tenure, if found suffering on retirement, from a disability which is either attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted in addition to retiring pension admissible, a disability element from the date of retirement if the degree of disability is accepted at 20% or more”* 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 Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are of three folds:-

- (a) Whether the disabilities Nos. (i) to (vii) of the applicant are attributable to or aggravated by Military Service?
- (b) Whether the Competent Authority has authority to overrule the opinion of RMB with regard to disability No. (viii) i.e. **“PIVD L-4-5 (M 51.06)”**?
- (c) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. 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)."*

7. 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, third, fourth, sixth and seventh disabilities i.e. **'PRIMARY HYPOTHYROIDISM (E03.9)'**, **'PRIMARY HYPERTENSION WITH HYPERTENSION RETINOPATHY (I 10.0)'**, **'TYPE 2 DIABETES MELLITUS (E 11.9)'**, **'THALASSEMIA MINOR (D 56.3)'** and **'CALCIFIC TENDONITIS SUPRASPINATUS TENDON B/L SHOULDER (LT>RT) (M75.3)'** are neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in the years 1998, 2000, 2001, 2005 and 2017 while posted in Peace locations (Jodhpur, Lucknow, Suratgarh

and Jaipur), 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 these disease to applicant is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was commissioned in Indian Army on 09.03.1990 and the first, third, fourth, sixth and seventh disabilities have started after more than 08, 10, 11, 14 and 26 years of Army service respectively i.e. in the years 1998, 2000, 2001, 2005 and 2017. 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 first, third, fourth, sixth and seventh disabilities i.e. **'PRIMARY HYPOTHYROIDISM (E03.9)', 'PRIMARY HYPERTENSION WITH HYPERTENSION RETINOPATHY (I 10.0)', 'TYPE 2 DIABETES MELLITUS (E 11.9)', 'THALASSEMIA MINOR (D 56.3)' and 'CALCIFIC TENDONITIS SUPRASPINATUS TENDON B/L SHOULDER (LT>RT) (M75.3)'** of the applicant should be considered as aggravated by military service.

8. However, with regard to second and fifth disabilities i.e. **'OBESITY (E66.0)'** and **'HYPERLIPIDAEMIA (E 78.5)'** we are agree with the opinion of the RMB as NANA as these disabilities are a life style disorder.

9. 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 28.05.2022 with regard to disability No. (viii) i.e. **"PIVD L4-5 (M51.05)'** 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."*

10. 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 competent authority, hence the decision of competent authority is void. Hence, we are of the opinion that the disability No. (viii) i.e. “**PIVD L4-5 (M51.05)**’ of the applicant should be considered as aggravated by military service as has been opined by the RMB.

11. In para 17 A (a) of Chapter VII of the Guide to Medical Officer (Military Pensions), 2002 the provision for composite assessment has been mentioned which reads as under :-

**“17A. Composite Assessment**

*(a) Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment will be the arithmetical sum of their separate assessment. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping. There is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases. This is not correct.”*

12. In the instant case there are functional effects of the first, third, fourth, sixth, seventh and eighth disabilities overlapping, as such composite assessment is to be reduced in proportion to the degree of overlapping. The degree of first, third, fourth, sixth, seventh and eighth are @10%, @40%, @20%, @10%, @15% and @20% respectively. The composite degree with all the disabilities is @76.02%. The degree with second and fifth disabilities are @5% each. Accordingly, we hold that

composite assessment of first, third, fourth, sixth, seventh and eighth disabilities is less than @75% for life.

13. 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> January 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."*

14. 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.

15. 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 less than @75% for life to be rounded off to 75% for life may be extended to the applicant from the next date of her retirement.

16. In view of the above, the **Original Application No. 150 of 2023** deserves to be partly allowed, hence **partly allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of

disability pension, are set aside. The first, third, fourth, sixth, seventh and eighth disabilities i.e. **'PRIMARY HYPOTHYROIDISM (E03.9)'**, **'PRIMARY HYPERTENSION WITH HYPERTENSION RETINOPATHY (I 10.0)'**, **'TYPE 2 DIABETES MELLITUS (E 11.9)'**, **'THALASSEMIA MINOR (D 56.3)'**, **'CALCIFIC TENDONITIS SUPRASPINATUS TENDON B/L SHOULDER (LT>RT) (M75.3)'** and **"PIVD L4-5 (M51.06)"** of the applicant are held as aggravated by Army Service. The applicant is entitled to get disability element less than @75% for life which would be rounded off to 75% for life from the next date of her retirement. The respondents are directed to grant disability element to the applicant less than @75% for life which would stand rounded off to 75% for life from the next date of her retirement. The respondents are further 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 the actual payment

17. No order as to costs.

18. Major Danish Farooqui, 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.

**(Lt. Gen. Anil Puri)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated : 16 December, 2023

AKD/-