

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
(CIRCUIT BENCH AT NAINITAL)**

**ORIGINAL APPLICATION No.423 of 2021**

Thursday, this the 24<sup>th</sup> day of February, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 4153179L L/Nk. Keshar Singh (Retd.), S/o Late Pratap Singh,  
R/o Village Urai Khola, P.O. Dewalthal, District – Pithoragarh,  
Uttarakhand-262542.

..... **Applicant**

Ld. Counsel for the : **Shri Lalit Singh Samant**, Advocate  
Applicant

Versus

1. Union of India, Ministry of Defence through its Secretary,  
South Block, New Delhi-110011.
2. P.C.D.A. (P), Allahabad, Uttar Pradesh.
3. Addl. Dte. Gen. Personnel Services, Adjutant General’s  
Branch, IHQ of MoD (Army), Room No. 11, Plot No. 108  
(West), Brassey Avenue, Church Road, New Delhi-110001.
4. Senior Record Officer, Records The Kumaun Regiment,  
PIN-900473, C/o 56 APO.
5. Chief of Army Staff, New Delhi.

..... **Respondents**

Ld. Counsel for the : **Shri Neeraj Upreti**, 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. A direction to quash the order dated 06.11.1979 passed by respondent no. 2 (contained as Annexure No.3 to this original application) or to*
- ii. A direction to grant the disability pension to the applicant from the date of his retirement i.e. 01.02.1978 with interest.*
- iii. To summon the entire records of the applicant pertaining to computation of his disability pension.*
- iv. Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.*

2. Briefly stated, applicant was initially enrolled in the Indian Army 23.01.1963 and was discharged on 31.01.1978 (AN) on completion of terms of engagement in Low Medical Category CEE (P) under Rule 13 (3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Army Hospital, Delhi on 26.08.1977 assessed his disability '**THYROTOXICOSIS (242)**' @30% for two years and opined the disability to be not attributable to military service but **Aggravated** by military service. The disability claim of the applicant was however rejected by the Principal Controller of Defence Account (Pensions), Allahabad vide letter dated 06.11.1979 on the ground that the disability of the applicant was neither attributable to military service which was communicated to the applicant vide letter dated 24.12.1979. The applicant preferred Mercy Appeal dated 31.10.2019 which too was rejected vide letter dated 16.01.2020. 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 **aggravated** by military service

vide RMB held on 26.08.1977 which had also assessed the disability @30% for two years. He further pleaded that at the time of enrolment, 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 enrolment in Army. The disease of the applicant was contracted during the service. He further pleaded that the Principal Controller of Defence Accounts (Pension) has no power to overrule the opinion of Release Medical Board held on 26.08.1977. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, as such the applicant is entitled to disability pension.

4. Ld. Counsel for the respondents conceded that 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 not attributable to 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 of two folds:-

- (a) Whether the Principal Controller of Defence Accounts (Pensions), Allahabad has authority to overrule the opinion of RMB?
- (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 aggravated by military service by the RMB. The RMB assessed the disability @30% for two years as aggravated by military service. However, the opinion of the RMB has been overruled by Principal Controller of Defence Accounts (Pensions), Allahabad and the 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 26.08.1977 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 disability of the applicant should be considered as **aggravated** by military service as has been opined by the RMB.

9. As for as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding for period in question i.e. two years from 31.01.1978.

10. Since the applicant's RMB was valid for two years w.e.f. 31.01.1978, 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.

11. In view of the above, the **Original Application No. 423 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 RMB. The applicant is entitled to get disability element @30% for two years from the next date of his discharge. The respondents are directed to grant disability element to the applicant @30% 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. 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.

12. No order as to costs.

(Vice Admiral AbhayRaghunathKarve) (Justice Umesh Chandra  
Srivastava)Member (A) Member (J)

Dated :24February, 2022

AKD/-