

Court No. 1 (E. Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 452 of 2021**

Friday, this the 18th day of February, 2022

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

Shrawan Kumar Tripathi (No. 14540683A Ex. Sepoy) S/o Late Kanhaiya Lal Tripathi, R/o Village Sarafan Bhaipur, Post Chhibramau, District – Kannauj (U.P.), PIN – 209721.

..... **Applicant**

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

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, Delhi-110011.
2. Incharge, Records EME, PIN-900453, C/O 56 APO.
3. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad.

.....**Respondents**

Ld. Counsel for the : **Shri R.K.S. Chauhan**, 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 direct the respondents to give disability pension/*

element along with its arrears and interest to the applicant w.e.f. 31.08.1996 (date of discharge) before completion of terms of engagement in medical category “(a) PRIMARY HYPERTENSION (E-79) aggravated by military service 30% for two years (b) CLOSED HEAD INJURY” 20% for two years (composite disability 50% for two years).

- (ii) 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.*
- (iii) Award costs to the applicant.*

2. Briefly stated, applicant was enrolled in the Corps of EME of Indian Army on 12.12.1980 and was discharged on 31.08.1996 (AN) in Low Medical Category due to his unwillingness to continue in alternative employment under Rule 13(3) Item III (V) of the Army Rules, 1954. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Mathura on 15.05.1996 assessed his disabilities (i) **‘PRIMARY HYPERTENSION (401)’ @ 30%** for two years as **aggravated** by military service and (ii) **‘CLOSED HEAD INJURY N-803, E-840’ @20%** for two years as neither attributable to nor aggravated (NANA) by military service and **composite disabilities @50% for two years**. The disability claim of the applicant was however rejected by the Principal Controller of Defence Account (Pensions), Allahabad vide letter dated 28.02.1997 on the ground that both the disabilities of the applicant were neither attributable to nor aggravated by military service and constitutional in nature which

was communicated to the applicant vide letter dated 31.03.1997. The applicant's wife preferred Appeal dated 22.09.1997 which too was rejected vide letter dated 25.10.2002. The applicant again submitted an Appeal in the month of May, 2021 which too was rejected vide letter dated 12.06.2021. 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 disability was found to be aggravated by military service vide RMB which had also assessed the disability @30% for two years. Although applicant's second disability has been regarded as NANA by the RMB. 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. Both the diseases/injury of the applicant were contacted during the 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 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 first 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 neither attributable to nor aggravated by military service. He further submitted that second disability has been regarded as NANA by the RMB. 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 RMB?
- (b) 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 disability of the applicant has been held as aggravated by military service by the RMB. The RMB assessed the disability @30% for two years. 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. However, second disability of the applicant has been regarded as NANA.

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 15.05.1996 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 first disability of the applicant should be considered as aggravated by military service as has been opined by the RMB.

9. With regard to second disability i.e. '**CLOSED HEAD INJURY N-803, E-840**' we are agree with the opinion of the RMB as NANA as the applicant, while on 20 days Casual Leave from 04.07.1994 to 23.07.1994, sustained injury on 06.07.1994, in a road accident while coming back from his sister's house, resulting into disability of to the extent of 20% for two years, on account of '**CLOSED HEAD INJURY N-803, E-840**'. The activity in which he sustained injury being not connected with his military duties in any manner, he is not entitled to the disability element of disability pension for this disability/injury.

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(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.

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 & 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 @30% for two years to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge.

13. Since the applicant's RMB was valid for two years w.e.f. 31.08.1996, 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.

14. In view of the above, the **Original Application No. 452 of 2021** deserves to be allowed, hence **allowed**. The impugned

orders, rejecting the applicant's claim for grant of disability element of disability element of disability pension for the first disability, are set aside. The first disability of the applicant i.e. '**PRIMARY HYPERTENSION (401)**' is held as aggravated by Military Service as has been opined by RMB. The applicant is entitled to get disability element of disability pension @30% for two years which would be rounded off to 50% for two years from the next date of his discharge for the first disability. The respondents are directed to grant disability element of disability pension to the applicant @30% for two years which would stand rounded off to 50% for two years from the next date of his discharge for the first disability. 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.

15. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Srivastava)
Member (A)

(Justice Umesh Chandra
Member (J)

Dated : 18 February, 2022

AKD/-