

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 547 of 2021**

Monday, this the 07th day of February, 2022

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

Babu Lal (No. 13838050 Ex. Sep.) S/o Sri Narain, R/o Village Julupur, Post – Kalpi, District – Jalaun (U.P.), PIN – 285204.

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, Delhi-110011.
2. The Officer Incharge Records ASC (South), Bangalore-560007.
3. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Prayagraj.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Bipin Kumar 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) *This Hon'ble Court may graciously be pleased to direct the respondents to give disability element (pension) along with its arrears and interest to the applicant w.e.f. 23.01.1983 towards his disability EEE (P) for life (Aggravated & Attributable by military service.*
- (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.*

2. Briefly stated, applicant was initially enrolled in the Army Supply Corps of Indian Army 14.06.1971 and was invalided out from service on 22.01.1983 (AN) on in Low Medical Category (not upto the prescribed military physical standard) under Rule 13 (3) Item III (v) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Ambala Cant. on 05.10.1982 assessed his disability '**ISCHAEMIC HEART DISEASE (411)**' @30% for two years and opined the disability to be **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 22.08.1983 on the ground that the disability of the applicant was neither attributable to nor aggravated by military service which was communicated to the applicant vide letter dated 07.09.1983. The applicant preferred representation dated 21.10.2019 which too was rejected by the respondents vide their letter dated 27.11.2019. The applicant also preferred petitions dated 14.11.2019 and 08.06.2021 which were rejected vide letters dated 13.12.2019 and 19.07.2021

respectively. 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. 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 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 disability of the applicant @30% for two years has been regarded as **aggravated by military service** 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, 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 element of 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. 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 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 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 22.01.1983.

10. Since the applicant's RMB was valid for two years w.e.f. 22.01.1983, 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. 547 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 of disability pension @30% for two years from the next date of his discharge. The respondents are directed to grant disability element of disability pension 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 Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 07 February, 2022

AKD/-