

Court No. 1 (E. Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 613 of 2021**

Wednesday, this the 02nd day of February, 2022

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

Ex. Naik Ajay Kumar (Service No. 14676571A), S/o Shri Raghuraj, R/o Flat No. 8A, Sai Astha Apartments, Infront of SDA Hospital, Bariyatu Road, Ranchi-834009, Jharkhand.

..... Applicant

Ld. Counsel for the : **Ms. Priyanka Singh**, Advocate.
Applicant

Versus

1. Union of India, Through it’s Secretary, Ministry of Defence, South Block, New Delhi.
2. The Chief of Army Staff, Army HQ (Sena Bhawan), New Delhi-110011.
3. Officer-in-Charge, EME Records, Secunderabad-500021, Telangana.
4. The PCDA (Pension), Draupadi Ghat, Allahabad, Uttar Pradesh-211014.

.....**Respondents**

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**, 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) *To quash the order/letter no. 7(91)/94/D(Pen/A) dated 26.05.1994 annexed as Annexure no. 1 to the present Original Application.*
- (ii) *To quash the order/letter dated 29.10.2018 annexed as Annexure no. 2 to this O.A. passed by the Senior Records Officer, for OIC Records.*
- (iii) *Direct respondents to grant disability pension as provided for in the pension certificate issued to the applicant.*
- (iv) *Direct the respondents to grant the arrears of disability pension from the date of P.P.O. issued to the applicant which is 6th July 1993.*
- (v) *Any other really fit and Honourable Tribunal may deem fit and proper in the facts and circumstances of the case in favour of the applicant in the interest of justice.*

2. Briefly stated, applicant was enrolled in the Corps of EME of Indian Army on 30.03.1979 and was discharged on 31.12.1992 (AN) in Low Medical Category "CEE (P)" having been found medically unfit for further service under Rule 13 (3) Item III (v) of the Army Rules, 1954 after rendering 13 years, 09 months and 01 day of service. At the time of retirement from service, the Release Medical Board (RMB) held at Secunderabad on 11.06.1992 assessed his disability '**ESSENTIAL HYPERTENSION (401)**' @30% for two years but opined the disability to be aggravated by military service due to stress and strain of service. The applicant's claim for grant of disability pension was rejected by the Chief Controller of Defence Accounts (P), Allahabad which was communicated to the

applicant vide letter dated 02.08.1993. The applicant preferred First Appeal dated 03.08.1993 which too was rejected vide letter dated 26.05.1994. The applicant also preferred Complaint dated 09.10.2018 which too was rejected vide letter dated 29.10.2018. 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 which had also assessed the disability @30% for two years. He further pleaded that the Chief Controller of Defence Accounts (Pension) has no power 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 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** the RMB, but pension sanctioning authority i.e. Chief Controller of Defence Accounts (Pensions), Allahabad has rejected the claim of the applicant on the ground that applicant's disability existed before arose during his military service and has been remain aggravated, 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 Chief 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. However, the opinion of the RMB has been overruled by Chief Controller of Defence Accounts (Pensions), Allahabad and the applicant's disability has been regarded as neither attributable to nor aggravated by military service. .

7. The issue of sanctity of the opinion of a RMB 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. Chief Controller of Defence Accounts (Pensions), Allahabad 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 Chief Controller

of Defence Accounts (Pension), Allahabad, hence the decision of Chief 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 @30% for two years 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 31.12.1992.

10. Since the applicant's RMB was valid for two years w.e.f. 31.12.1992, hence, the respondents will now have to conduct a fresh Re-Survey Medical Board for him to decide his future eligibility to disability pension.

11. In view of the above, the **Original Application No. 613 of 2021** deserves to be allowed, hence, **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability pension, are set aside. The disability of the applicant is held as aggravated @30% for two years as has been opined by the RMB. The applicant is entitled to get disability pension @30% for two years from the next date of his discharge. The respondents are directed to grant 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. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 02 February, 2022

AKD/-