

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 1079 of 2023**Wednesday, this the 21st day of February, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**No. JC-302212H Ex. Sub. Ram Singh, S/o Shri Dhannu Singh,
R/o Village and Post Khanwa, Tehsil Sahaswan, District Badaun-
202524.**..... Applicant**Ld. Counsel for the : **Shri Manoj Kumar Awasthi**, Advocate
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence,
South Block, New Delhi-110011.
2. The Chief of the Army Staff, Headquarters, New Delhi-
110110.
3. Officer-in-Charge Records, Sena Vayu Raksha Abhilekh,
Army Air Defence Records, PIN 908803, C/o 99 APO.
4. The Additional Directorate General of Personnel Services,
PS-4 (Imp) Adjutant General’s Branch, Integrated HQ of
MoD (Army), DHQ PO, New Delhi-110010.
5. The Principal Controller of Defence Accounts (Pension),
Allahabad (Prayagraj).

.....RespondentsLd. Counsel for the : **Shri Bipin Kumar Singh**, Advocate
Respondents. Central Govt. Counsel
Assisted by **Major Uma Yadav**,
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 :-

- (i) *To issue/pass an order or directions to set aside/quash the order/letter No. G/3/PHP/PDC21235/2019 dated 09.01.2019 passed by respondents no. 5annexed as Annexure no. 1 to this original application.*
- (ii) *To issue/pass an order or directions to the respondents to grant of disability element of disability pension @30% from date of discharge i.e. 31.08.2018 along with 12% interest on arrear in light of Hon’ble Apex Court judgment.*
- (iii) *To issue/pass an order or directions to the respondents to grant subsequently benefit of rounding off/broad banding off disability pension @30% to @50% to the applicant from the date of discharge i.e. 31.08.2018 along with 12% interest on arrear in light of Hon’ble Apex Court judgment and Government letter dated 31.01.2001.*
- (iv) *To direct the respondent No. 3 and 4 to consider and dispose off the Appeal dated 24.04.2019 which is still pending for consideration with the competent authority.*
- (v) *To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- (vi) *To allow this original application with costs.*

2. Briefly stated, applicant was initially enrolled in the Indian Army 03.09.1991 and was discharged on 31.08.2018 (AN) on completion of terms of engagement in Low Medical Category under Rule 13 (3) Item I (ii) (a) (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Kota on 23.06.2018 assessed his disability **‘FRACTURE FIBULA (RT) (ICD NO. S82.4)’ @30% for life and**

opined the disability to be **attributable to service**. The disability claim of the applicant was however not accepted by the Principal Controller of Defence Account (Pensions), Allahabad vide letter dated 09.01.2019 on the ground that the disability of the applicant was neither attributable to nor aggravated by military service and constitutional in nature which was communicated to the applicant vide letter dated 16.02.2019. The applicant preferred First Appeal which too was rejected vide letter dated 04.12.2019 which was communicated to the applicant vide letter dated 25.12.2019. The applicant preferred Second Appeal dated 06.05.2020 through e. Mail on which the applicant was advised to prefer Second Appeal as per format together with undertaking certificate and delay explanation justifying the delay in preferring Second Appeal vide letter dated 07.06.2022. 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 life. 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. He further submitted that Principal Controller of Defence Accounts (Pension), Allahabad has no authority 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 pension and its rounding off to 50%.

4. Ld. Counsel for the respondents conceded that disability of the applicant @30% for life has been regarded as **attributable to military service** by the RMB, but pension sanctioning authority i.e. Principal Controller of Defence Accounts (Pensions), Allahabad has not accepted the claim of the applicant on the ground that the applicant sustained injury on 09.01.2011 while he was returning from Petrol Pump to Camp after refilling petrol in his motor cycle as such there is no causal connection between the injury/disability and military service and regarded as neither attributable to nor aggravated by military service, hence applicant is not entitled to disability element of disability pension in terms of Rule 6 of Entitlement Rules, 2008 and Regulation 53(a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that “*An individual released/retired/ discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20% or more*”. 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 attributable to military service by the RMB. The RMB assessed the disability @30% for life. 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 23.06.2018 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 attributable to military service as has been opined by the RMB.

9. 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."*

10. 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.

11. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for

interference, it would have dismissed the writ petition on that score alone.”

12. As such, in view of the decision of Hon'ble Supreme Court in the cases of ***Union of India and Ors vs Ram Avtar & ors (supra)*** and ***Shiv Dass (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 life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

13. In view of the above, the **Original Application No. 1079 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 disability of the applicant is held as attributable to Army Service as has been opined by the RMB. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 05.09.2023. 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.

14. No order as to costs.

15. Major Uma Yadav, 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.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 21 February, 2024

AKD/-