

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 745 of 2023**Wednesday, this the 14th day of February, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

NS-21826-F, Major (MNS) Sunakshi Singh (Retd.), Wife of Shri Jyotish Kumar, R/o Flat No. 1711, Mahagun Mascot, Siena Tower, Crossing Republic, Ghaziabad, Vijay Nagar (UP), PIN-201016.

..... Applicant

Ld. Counsel for the Applicant : **Shri R. Chandra**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ Post Office, New Delhi-110011.
3. Integrated HQ of MoD (Army), Adjutant General’s Branch, Addl. Dte. Gen. Manpower, ORO/MP-7/Adjudication Cell, West Block-III, R.K. Puram, New Delhi-110066.
4. PCDA (Pension), Draupadi Ghat, Allahabad-14 (UP).

.....Respondents

Ld. Counsel for the Respondents. : **Dr. Shailendra Sharma Atal**, Advocate
Central Govt. Counsel
Assisted by Major Danish Farooqui,
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) *The Hon’ble Tribunal may be pleased to set aside the rejection order dated 17.10.2022 (Annexure No. A-1) and order dated 05.04.2023 (Annexure No. A-2).*
- (II) *The Hon’ble Tribunal may be pleased to direct the respondents to grant Disability Pension (Service Element + Disability Element) with effect from 29.08.2022 (Next date of Discharge) along with its arrears and interest thereon at the rate of 18% per annum.*
- (III) *Hon’ble Tribunal may be pleased further to grant benefit of rounding of disability pension @50 Percent in terms of Ram Avtar’s case.*
- (IV) *Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Briefly stated, applicant was commissioned in the Indian Army on 29.08.2008 as Short Service Commissioned Nursing Officer and retired on 28.08.2022 in Low Medical Category. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Danapur on 28.06.2022 assessed her disabilities (i) **‘AXIAL SPONDYLOARTHRITIS (ICD NO. M45)’ @20% as aggravated** by military service, (ii) **‘PRIMARY HYPERTENSION (ICD NO. I39)’ @10% as aggravated** by military

service, **composite both disabilities @28% for life**, (iii) **'OBESITY (ICD NO. E66) @5%** as neither attributable to nor aggravated (NANA) by military service and (iv) **'TYPE 2 DIABETES MELLITUS (ICD E11) @20%** as NANA by service, **composite disabilities for all the four disabilities @45.28% for life**. However, the applicant's claim for grant of disability pension was rejected vide letter dated 06.10.2022 which was communicated to the applicant vide letter dated 17.10.2022. The applicant preferred First Appeal dated 28.11.2022 which too was rejected vide letter dated 05.04.2023. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of commissioning, 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 commissioning in Army. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. 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. On the other hand, Ld. Counsel for the respondents contended that although the first and disabilities have been regarded as aggravated by service @20% and 10% respectively,

composite both disabilities @28% for life and the third and fourth disabilities @5% and 20% respectively have been regarded as NANA, composite disabilities for all the four disabilities @45.28% for life but the competent authority has regarded the all the disabilities as NANA, hence the applicant is not entitled to disability pension. He further submitted that Hon'ble Apex Court on 03.07.2023, in Civil Appeal No. 4248 of 2023 filed by Union of India against grant of disability pension with rounding off in a case of NANA [*Brig Mohanan Nair (Retd) Vs Union of India, OA 437 of 2018*] has stayed the grant of disability pension ordered by AFT, RB, Kochi. In that case, the applicant had retired in 2013 as a Low Medical Category (LMC) on account Primary Hypertension, Obesity and Impaired Glucose Tolerance. In view of the aforesaid order passed by the Hon'ble Supreme Court, the Armed Forces Tribunal, Regional Bench, Jabalpur has passed an order dated 20.07.2023 in O.A. No. 24 of 2020, **JC – 580297A, Sub/Clk Chandra Sekhar Acharya (Retd.) Vs. Union of India & Others** that “*awaiting decision of the Hon'ble Supreme Court, list the matter after Civil Appeal No. 4248 of 2023 is decided by the Supreme Court*”. Relying upon the above order, Ld. Counsel for the respondents submitted that this case may be deferred. Even otherwise, 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

Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are of four folds:-

- (a) Whether the Competent Authority has authority to overrule the opinion of RMB with regard to first and second disabilities?
- (b) Whether the third and fourth disabilities of the applicant are also attributable to or aggravated by Military Service?
- (c) Whether the Short Service Commissioned Officer is entitled for the grant of disability pension?
- (d) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. This is a case where the first and second disabilities of the applicant have been held as aggravated by military service by the RMB. The RMB assessed the first disability @20% and second disability @10%. However, the opinion of the RMB has been overruled by the Competent Authority and the first and second disabilities have also 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 over ruling the opinion of RMB held on 28.06.2022 with regard to first and second disabilities 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 Competent Authority, hence the decision of Competent Authority with regard to first and second disabilities is void. Hence, we are of the opinion that the first and second disabilities of the applicant should be considered as aggravated by military service as has been opined by the RMB.

9. With regard to fourth disability i.e. '**TYPE-2 DIABETES MELLITUS (ICD E11)**', the law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

10. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the fourth disability '**TYPE 2 DIABETES MELLITUS (ICD E11)**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in November, 2021 while posted in Peace location (Military Hospital, Danapur, Bihar), therefore, applicant is not entitled to disability pension for fourth disability. However, considering the facts and circumstances of the

case, we are of the opinion that this reasoning of Release Medical Board for denying disability pension to applicant for the fourth disability is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was commissioned in Indian Army on 29.08.2008 and the fourth disability has started after more than 13 years of Army service i.e. in November, 2021. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra), and the fourth disability of the applicant should also be considered as aggravated by military service.

11. With regard to third disability i.e. '**OBESITY (ICD NO. E66)**' we are agree with the opinion of the RMB as NANA as it is a lifestyle disease and body weight can be under acceptable limits by lifestyle modification.

12. In para 17 A (a) of Chapter VII of the Guide to Medical Officer (Military Pensions), 2002 the provision for composite assessment has been mentioned which reads as under :-

"17A. Composite Assessment

(a) Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment

will be the arithmetical sum of their separate assessment. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping. There is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases. This is not correct.”

13. In the instant case there are functional effects of the first and second disabilities overlapping, as such RMB has assessed the composite disabilities for the first and second disabilities @28% for life. The degree of fourth disability is @20%. Further, there are functional effects of the first, second and fourth disabilities overlapping, as such composite assessment is to be reduced in proportion to the degree of overlapping. Accordingly, we hold that composite assessment of first, second and fourth disabilities is less than @45.28% for life.

14. Further, consequent upon the issue of Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi letter No. 1(9)/2006/D(Pen-C) dated 30.08.2006 and letter No. 16(01)/2012-D(Pen-Pol) dated 23.03.2015, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 23 dated 27.05.2015 wherein it is provided that *“in the case of aggravation too, service element of disability pension in respect of non-regular officers would be calculated after taking into account the full commissioned service rendered by them as calculated in the case of Regular Commissioned Officer. As such EC/SSC officers in aggravation cases would also be allowed the benefit of*

revision w.e.f. 30.08.2006 as allowed to attributable cases vide MoD letter dated 30.08.2006.”

15. In view of the Circular No. 23 dated 27.05.2015 issued by the Principal Controller of Defence Accounts (Pension), Prayagraj the applicant is entitled for disability pension which include disability element as well as service element also.

16. 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 invalided 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."*

17. 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.

18. 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 pension less than @45.28% for life to be rounded off to 50% for life may be extended to the applicant from the next date of her retirement.

19. We have perused the order passed by the Hon'ble Apex Court on 03.07.2023, in Civil Appeal No. 4248 of 2023 filed by Union of India against grant of disability pension with rounding off in a case of NANA [**Brig Mohanan Nair (Retd) Vs Union of India, OA 437 of 2018**] by which Hon'ble Apex has stayed the grant of disability pension ordered by AFT, RB, Kochi and the order dated 20.07.2023 in O.A. No. 24 of 2020, **JC – 580297A, Sub/Clk Chandra Sekhar Acharya (Retd.) Vs. Union of India & Others** passed by the Armed Forces Tribunal, Regional Bench, Jabalpur and we find that the aforesaid orders passed by the Hon'ble Supreme Court as well as Armed Forces Tribunal, Regional Bench, Jabalpur were in a specific case as an interim measure. Further, the facts of this case are different in comparison with the abovementioned cases as in the instant case the applicant's first and second disabilities have been regarded as aggravated by the RMB but the competent authority has overruled the opinion of the RMB and the aforesaid disabilities have also been held as NANA. Therefore, we are of the view that due to the aforesaid orders instant Original Application need not be deferred.

20. In view of the above, the **Original Application No. 745 of 2023** deserves to be partly allowed, hence **partly allowed**. The impugned orders, rejecting the applicant's claim for grant of disability pension for the first, second and fourth disabilities, are set aside. The first, second and fourth disabilities of the applicant are held as aggravated by Army Service. The applicant is entitled to get disability pension less than @45.28% for life which would be rounded off to 50% for life from the next date of her retirement. The respondents are directed to grant disability pension to the applicant less than @45.28% for life which would stand rounded off to 50% for life from the next date of her retirement. 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.

21. No order as to costs.

22. Major Danish Farooqui, 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 : 14 February, 2024

AKD/-