

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 563 of 2023**Monday, this the 03<sup>rd</sup> day of February, 2025**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Maj. Gen. Sanjay Singh, Member (A)”**

RC 60108X Tarun Kumar Mukhopadhyay (Retd), S/o Shri Binoy Krishna Mukhopadhyay, Resident of 116/656 A7, M Block, Kakadev, Kanpur Nagar, Kanpur, Uttar Pradesh -208025

**..... Applicant**Ld. Counsel for the : **Shri Aditya Singh Puar**, Advocate  
Applicant

Versus

1. Union of India, through Secretary to Govt. of India, Ministry of Defence, South Block, New Delhi -110011.
2. Additional Director General of Personnel Services, P.S. Directorate, Sena Bhawan, DHQ PO, New Delhi-110011.
3. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad (UP).

**.....Respondents**Ld. Counsel for the : **Shri Ashish Kumar Singh**, Advocate  
Respondents. Central Govt. Standing Counsel

## **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) *Limited Prayer for Directions to the Respondents to process the case for grant of disability pension to the Applicant in terms of their own recent policies and law declared by Constitutional Courts and consequently release the disability pension w.e.f. Applicant’s date of release from service @30% disability (rounded off to 50%) with costs and interest as per the declaration of the Applicant’s disability being ‘aggravated by military service’ by the duly constituted release medical board (Annexure A-1), since the Applicant’s disability which was declared ‘aggravated’ by the Release Medical Board has been unilaterally and arbitrarily rejected by the finance / administrative authorities of the Union of India vide Impugned Orders I and II.*
- (ii) *With a further prayer that in case of contest of the prayer of the Applicant, heavy cost, interest and compensation may kindly be directed to be paid to the Applicant to be recovered from the authority who has failed to process the case of the Applicant in accordance with law, per the judgment in Ex. NK. Singheswar Singh’s case detailed supra, and with a further.*
- (iii) *Prayer for ignoring /setting of the reasons mentioned in the impugned orders (Impugned Order I & II) rejecting the claim disability pension being in contravention of law laid down by Hon’ble Courts, or any other direction or order that the Hon’ble Tribunal may deem fit in the facts and circumstances of the case.*
- (iv) *Any other Order/direction(s) this Learned Tribunal may deem fit.*

2. Briefly stated, applicant was initially enrolled in the Indian Army on 09.12.1962, thereafter, commissioned in the Indian Army 12.08.1985 and retired on 30.09.1991 (AN) on attaining the age of superannuation. Before retirement from service, the Release

Medical Board (RMB) held at Military Hospital, Panagarh on 26.04.1991 assessed his disability '**ISCHAEMIC HEART DISEASE 411 (V-67)**' @30% permanent for two years as **aggravated by** military service. However, the respondents have not granted the disability pension to the applicant. The applicant preferred application through E. Mail dated 12.12.2021 for holding Re-Assessment Medical Board which too was rejected vide letters dated 06.06.2022 and 17.08.2022. 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 aggravated military service vide RMB which had also assessed the disability @30% for two years. He further pleaded that at the time of enrolment and commission, 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 and commission in Army. He further submitted that competent authority has no authority to overrule the opinion of RMB. Ld. Counsel for the applicant relying upon the law laid down by the Hon'ble Apex Court in the case of **Commander Rakesh Pande Versus Union of India & Others**, (Civil Appeal No. 5970 of 2019) decided on 28.11.2019 submitted that the applicant's disability is a permanent nature and it cannot be assessed for two years rather it should be assessed for life. 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 two years has been regarded as **aggravated by** the RMB. The initial claim was processed by the officer to competent authority through Law Office of Major Navdeep Singh, Punjab & Haryana High Court dated 30.12.2020. The degree of disablement was for two years w.e.f. 01.10.1991 to 30.09.1993. The applicant was due for Re-Assessment Medical Board (RAMB) on 01.10.1993 which was not carried out by the applicant on due date. The applicant was approached through e. Mail dated 12.12.2021 for processing the case/accord sanction of holding RAMB. The DGMS-5A further processed the case to AG/PS-4 (Imp-II) for obtaining time bar sanction for condonation of delay for conduct of delayed RAMB of the applicant. The case not been adjudicated for the initial claim as a result of which the case cannot be processed for time bar sanction for RAMB due to requirement of Statement of Case justifying reason for delay. The MP-5 (B) was approached the applicant for want of documents like Undertaking Certificate, Statement of Case justifying delay of the initial adjudication and delay certificate vide letter dated 06.04.2023. Now some, clarification received from MP-5 (B) vide Note No. 12682/RC-00180/-2/ROS/MP5(B) dated 09.08.2024 wherein it is stated that *"The case was not processed earlier for initial adjudication as the policy for considering those who were*

*retained in service despite disability and retire voluntarily or otherwise prior to 01 Jan 1996 were not considered for grant of disability element/war injury element in addition to retiring/service pension or retiring or service gratuity. Therefore, the need for initial adjudication had not arisen.”* The applicant did not file First and Second Appeals. The applicant should have exercised all administrative remedies before filing Original Application before this Tribunal in accordance with Section 21 and 22 of the Armed Forces Tribunal Act, 2007. The alternate efficacious remedies available to the applicant have not been exhausted. The applicant is not entitled to disability element of disability pension in terms of Regulation 54 of Pension Regulations for the Army, 1961 (Part-I), which stipulates that *“An officer who is retired otherwise than at his own request, with a retiring pension or/gratuity, but who, within a period of ten years from the date of retirement is found to be suffering from a disease which is accepted as attributable to his military service, may, at the discretion of the competent authority, be granted, in addition to his/her retiring pension/gratuity,. a disability element at the rate appropriate to the accepted degree of disablement and the rank last held, with effect from such date as may be decided upon in the circumstances of the case. Note : The officer claiming the benefit under the provision of Regulation 54 above will send an application the CCDA (P) directly requesting to be brought before a medical board. On receipt of the application and the relevant documents, CCDA(P) will decide, where*

*necessary, in consultation with the Medical Adviser (Pensions) attached to his office, whether a prima-facie justification for bringing the claimant before a medical board exists or not. If it is decided to bring the officer before a medical board the CCDA (P) will make arrangement themselves for a medical board.”* He further submitted that submitted that Para 5 of Entitlement Rules for Casualty Pensionary Awards in Armed Forces Personnel, 2008 stipulates that *“The medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore, it may not detect some dormant disease. Besides certain hereditary constitutional and congenital diseases may manifest later in life, irrespective of service conditions. The mere fact a disease has manifested during military services does not per se establish attributability to or aggravation by military service.”* He further submitted that the Para 10 of Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 1981 (Entitlement Rules, 1981) stipulates that *“Post Discharge Claims. Cases in which disease did not actually lead to the members discharge from service but arose within 10 years thereafter, may be recognized as attributable to service if it can be established medically that the disability is delay manifestation of a pathological process set in motion by service conditions obtaining prior to discharge and that if the disability had been manifest at the time of discharge the individual would have been invalided out of service on this account”*. In the instant case the applicant was retired on attaining

the age of superannuation on 30.09.1991. As such the applicant is not entitled for holding Re-Assessment Medical Board. The applicant is not entitled for the grant of 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 three folds:-

- (a) Whether the competent authority has authority to overrule the opinion of RMB?
- (b) Whether the disability of the applicant is permanent in nature and it should be assessed for life?
- (c) 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. The RMB assessed the disability @30% for two years. However, the opinion of the RMB has been overruled and the applicant has not been granted disability element of disability pension.

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 at the time of retirement 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 the competent authority, hence the decision of competent authority by not granting



disability element of disability pension 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. We also observe that at page 4 of the IMB proceedings (enclosed at page 28 of the Original Application), in the column of “*Probable duration of this degree of disablement*” the IMB has endorsed as “**Permanent (2 years)**”. It shows that applicant’s disability is a permanent nature and it cannot be limited for two years. Additionally, since the applicant was invalided out from service before completion of terms of engagement in low medical category for the aforesaid disability, we are of the considered opinion that the applicant’s disability is a permanent nature.

10. In the case of **Commander Rakesh Pande Versus Union of India & Others** (supra) Hon’ble Apex Court has held as under :-

*“Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual himself requests for a review. The applicant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @50% for life.”*

11. In view of the law laid down by the Hon’ble Apex Court in the case of **Commander Rakesh Pande Versus Union of India & Others** (supra), as the applicant’s disability is a permanent nature,

the decision once arrived at will be for life and applicant is entitled disability pension for life which cannot be restricted for a period of two years.

12. 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 10<sup>th</sup> 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."*

13. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017/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.

14. 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.”*

15. 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/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.

16. In view of the above, the **Original Application No. 563 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 @30% for life. Further, the disability of applicant is also 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 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 of disability pension 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 12.05.2023. 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.

17. No order as to costs.

**(Maj. Gen. Sanjay Singh)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated : 03 February, 2025

AKD/-