

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 777 of 2023

Thursday, this the 13th day of February, 2025

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Maj. Gen. Sanjay Singh, Member (A)”**

IC-49040L Col. (TS) Gautam Kumar Jha (Retd.), S/o Shri Harendra Kumar Jha, R/o Opposite Community Hall, Patliputra Path, Rajendra Nagar, District : Patna, Bihar-800016.

..... Applicant

Ld. Counsel for the Applicant : **Shri Raj Kumar Mishra, Advocate
Ms. Upasna Mishra, Advocate
Shri Kapil Sharma, Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarter, Ministry of Defence (Army), South Block-III, DHQ PO, New Delhi-110011.
3. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Prayagraj, Uttar Pradesh-211014.
4. The Officer-in-Charge Records, JAT Regimental Centre, PIN-900496, C/O 56 APO.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Devesh Kumar Mishra, Advocate
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:-

- (a) *To issue/pass an order or direction of appropriate nature to the respondents to set aside/quash the impugned order dated 21.01.2022 and 30.06.2022.*
- (b) *To issue/pass an order or direction of appropriate nature to the respondents directing to grant disability pension from the date next to the date of discharge i.e. 01.01.2021 and interest thereon at the rate of 18% per annum.*
- (c) *Issue/pass an order or direction to the respondents to round off the disability pension from 30% for life to 50% for life in terms of benefit of broad-banding as held in Ram Avtar’s case.*
- (d) *Issue/pass any other order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.*
- (e) *Allow this application with exemplary costs.*

2. Briefly stated, applicant was commissioned in the Indian Army 16.12.2020 and retired on 31.12.2020 on completion of terms of engagement in Low Medical Category on attaining the age of superannuation. The applicant is in receipt of Service Pension. Before retirement from service, the Release Medical Board (RMB) held at Military Hospital, Danapur Cantt. on 22.09.2020 assessed his disability ‘**PRIMARY HYPERTENSION (ICD-10)**’ @30% for life and opined the disability to be **aggravated by service**. The disability claim of the applicant was however ‘Not Approved’ by the competent authority vide letter dated 21.01.2022 on the ground that the disability does not fulfil the eligibility condition as laid down in existing rules/provision for the grant of disability element. The

applicant preferred First Appeal which too was rejected vide letter dated 30.06.2022. The applicant preferred Second Appeal which too was rejected vide letter dated 18.04.2023. 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 life. He further pleaded that at the time of 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 commission in Army. He further submitted that the competent authority 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 element of disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents submitted that disability of the applicant @30% for life has been regarded as **aggravated by service** by the RMB, but competent authority has 'Not Approved' the claim of the applicant on the ground that the disability does not fulfil the eligibility condition as laid down in existing rules/provision for the grant of disability element, hence in terms of Regulations 37 (a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that "An

Officer who retires on attaining the prescribed age of retirement or on completion of tenure, if found suffering on retirement, from a disability which is either attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted in addition to the retiring pension admissible, a disability element from the date of retirement if the degree of disability is accepted at 20% or more” the applicant is not entitled to disability element of disability pension. The First Appeal preferred by the applicant was rejected on the ground that the onset of the illness was in September, 2014 at Thakurbari. The applicant was incidentally detected with blood pressure of 156/106 mm Hg during annual medical examination. He was extensively evaluated for the same by the medical specialist and investigation like ECG & USG abdomen were carried out and were all within normal limits. There was no evidence of secondary cause of hypertension. His systemic examination/hematology/metabolic profile was within acceptable limits and there was no evidence of any target organ damage. The applicant was also detected to be obese with a BMI of 27.45 Kg/m². He was stated on antihypertensive medication and adequate control of blood pressure was achieved. His BP on medication was 126/84 mm Hg. The applicant was placed in LMC for both the conditions with suitable employability restriction. The applicant subsequently upgraded for obesity. During RMB he was stable and had well optimised BP of 130/78 mm Hg on antihypertensive medication. His systemic and general examination

was normal and he had a normal hematology and metabolic profile. There was no evidence of any target organ damage/complications at the time of release. Primary Hypertension is a multifunctional disorder with a genetic preponderance. Other risk factor includes increasing age, obesity and dietary factors. Entitlement of attributability is never appropriate for Primary Hypertension, but where disablement due to hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. Primary Hypertension may therefore be held aggravated if its onset is in Field/HAA/CI Ops. In this case even through the detection of the illness was while service in field, the illness was incidentally detected during annual medical examination and the individual did not present with any complaint. Thereafter was no delay in diagnosis and initiation of treatment. After detected he was provided with sheltered appointment to prevent any further aggravation. Therefore, applicant had a stable course of disease with sheltered appointment to prevent any further aggravation. Therefore, applicant had a stable course of the disease with optimal control of blood pressure and there was no evidence of aggravation of the disease in terms of the target organ damage at the time of release. Moreover, the applicant was also found to be obese at the time of initial evaluation of Hypertension and obesity is a known risk factor for the same. Hence, the condition of disability is held NANA in terms of Para 43 Chapter VI, Guide to Medical

Officers (Military Pensions), 2002 amended, 2008. Ld. Counsel for the respondents contended 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 that a disease has manifested during military serviced does not per se establish attributability to or aggravation by military service.”* 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 two folds:-

- (a) Whether the competent authority 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 life. However, the opinion of the RMB has been overruled by the competent authority 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 over ruling the opinion of RMB held on 22.09.2020 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 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. 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."*

10. 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.

11. 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/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 the next date of his retirement.

12. In view of the above, the **Original Application No. 777 of 2023** 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 @30% for life which would be rounded off to 50% for life from the next date of his retirement. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life from the next date of his retirement. 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.

13. No order as to costs.

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

(Justice Anil Kumar)
Member (J)

Dated : 13 February, 2025

AKD/-