

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 839 of 2023**Friday, this the 12th day of January, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

No. JC-602345-X, Ex. Hony. Lt. Thaman Singh Gurung, S/o Shri Nar Bahadur Gurung, Resident of Village : Gamdada, Post Office : Walling Anchal – Gandaki, District : Syangja, Nepal.

..... ApplicantLd. Counsel for the Applicant : **Shri V.P. Pandey**, Advocate
Shri R.K. Singh, Advocate
Maj. S.M. Mustafa (Retd), Advocate
Shri D.K. Dixit, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi -110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence, South Block, New Delhi -110011.
3. The Officer-in-Charge Records, 14 Gorkha Rifles, PIN 900295, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj -211014.

.....RespondentsLd. Counsel for the Respondents. : **Shri Yogesh Kesarwani**, Advocate
Central Govt. Standing Counsel**ORDER (ORAL)****“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 to respondent to give effect to the sanction letter contained as Annexure No.A-1.*
- (b) *To issue/pass an order or direction to grant disability element of disability pension @20% rounded off to 50% for life w.e.f. the next date of discharge i.e.01.10.2007.*
- (c) *Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.*
- (d) *Cost of the original application be awarded in favour of the applicant.*

2. Briefly stated, applicant was initially enrolled in the 1st Gorkha Rifles of Indian Army 22.09.1979 and discharged on 30.09.2007 (AN) on completion of terms of engagement in Low Medical Category under Rule 13 (3) Item I (i)(a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Central MI Room Gandhinagar on 14.09.2007 assessed his disability '**FRACTURE SHAFT OF HUMERUS (LT) OPTD**' @20% for life and opined the disability to be **Attributable to** military service. The disability claim of the applicant was however returned by the Principal Controller of Defence Account (Pensions), Allahabad vide letter dated 03.04.2008 stating that attributability certificate for injury as per annexure-I has not been found enclosed with claim. Subsequently, Records 14 Gorkha Rifles asked Attributability Certificate from 1/1 Gorkha Rifles asked undertaking certificate to the applicant for the grant of disability pension vide letter dated 21.06.2008. Again, Records 14 Gorkha Rifles approached to 1/1 Gorkha Rifles for submission of Attributability Certificate vide letter dated 22.09.2008. However, Gorkha Rifles had not received any certificate from 1/1 Gorkha

Rifles and no any application/petition received from the applicant for the grant of disability pension. Therefore, claim for grant of disability pension had not been processed with pensioning authority. 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 @20% for life. He further submitted that while applicant in service, he had participated in unit Volleyball game, during the game he had sustained injury on 24.07.2007. Subsequently, as per opinion of Col. Yogesh Sharma, Orthopaedic Surgeon, the applicant was placed in low medicate category for the aforesaid injury. The Medical Authority opined that the injury sustained as attributable to military service. The Principal Controller of Defence Accounts has no authority to overrule the opinion of the RMB. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of disability pension in similar cases, as such the applicant be granted 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 has filed Counter Affidavit which is taken on record. He conceded that disability of the applicant @20% for life has been regarded as **attributable to the RMB**, but pension sanctioning authority i.e. Principal Controller of

Defence Accounts (Pensions), Allahabad has returned the claim of the applicant for the want of attributability certificate. Subsequently, Records 14 Gorkha Rifles asked Attributability Certificate from 1/1 Gorkha Rifles asked undertaking certificate to the applicant for the grant of disability pension vide letter dated 21.06.2008. Again, Records 14 Gorkha Rifles approached to 1/1 Gorkha Rifles for submission of Attributability Certificate vide letter dated 22.09.2008. However, Gorkha Rifles had not received any certificate from 1/1 Gorkha Rifles and no any application/petition received from the applicant for the grant of disability pension. Therefore, claim for grant of disability pension had not been processed with pensioning authority. 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 return the claim for the want of attributability certificate?
- (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 @20% for life. However, the Principal

Controller of Defence Accounts (Pensions), Allahabad has returned the claim stating that attributability certificate for injury as per annexure – I has not been found enclosed with claim.

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 the Principal Controller of Defence Accounts (Pensions), Allahabad over ruling the opinion of RMB held on 14.09.2007 and returning the claim of the applicant for the want of attributability certificate 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 returned by Principal Controller of Defence Accounts (Pension), Allahabad for the want of attributability certificate, hence the decision of Principal Controller of Defence Accounts (Pensions), Allahabad returning the claim of the applicant for the want of attributability certificate 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 and applicant is entitled for the grant of disability element of disability pension.

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(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. 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 element of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge.

12. As communications between the Records 14 Gorkha Rifles, 1/1 Gorkha Rilres and Principal Controller of Defence Accounts (Pensions), Prayagraj with regard to grant of disability element of disability pension to the applicant are going on from the next date of discharge of the applicant, we are of the opinion that the restriction for a period of three years prior to filing of the Original Application is not applicable in the instant case. As such the applicant is entitled for the grant of disability element of disability pension from the next date of his discharge.

13. In view of the above, the **Original Application No. 839 of 2023** deserves to be allowed, hence **allowed**. The order returning

the applicant's claim for grant of disability element of disability pension is set aside. The disability of the applicant is held as attributable to Military Service as has been opined by RMB. The applicant is entitled to get disability element @20% for life which would be rounded off to 50% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @20% for life which would stand rounded off to 50% for life from the next date of his discharge. 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.

14. No order as to costs.

15. Ld. Counsel 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.

(Lt. Gen. Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 12 January, 2024

AKD/Ashok/-