

**E -Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 184 of 2020**

Monday, this the 12<sup>th</sup> day of July, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 13899102X Ex Sepoy Vijay Pal Singh, S/o Sri Chandra Lal,  
R/o Vill & Post- Babugarh, Distt- Gaziabad (U.P.)

..... Applicant

Ld. Counsel for the Applicant : **Shri KK Misra, Advocate**  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence,  
New Delhi.
2. The Chief of Army Staff, IHQ, Ministry of Defence (Army),  
South Block, New Delhi.
3. Officer-in-Charge, Army Services Corps, Records,  
Bengaluru.
4. PCDA (Pensions), Draupadhi Ghat, Allahabad (UP)-  
211014.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Anurag Mishra,  
Central Govt. Counsel**

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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 quash PCDA (P) Allahabad letter No GP/RA/02/2002/2084/IV dt 20.04.2002, along with the forwarding letter of ASC Records letter dated 21 May 2002 (Annexure A-2 and A-3 to O.A.)*
- (II). *to direct the respondents to grant 20% disability pension to the applicant from the date it was stopped, i.e. 30 April 2002.*
- (III). *to direct the respondents to thereafter, round off this percentage of disability to 50% as per the policy on the subject and pay the arrears of disability pension with interest as applicable.*
- (IV). *Any other relief which the Hon’ble Tribunal may consider appropriate may be granted in favour of the applicant.*
- (V). *Cost of the application be awarded to the applicant.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 21.01.1988 and was invalided out of service in Low Medical Category on 26.06.1989 (FN) in for the disability ‘ABDOMINAL TB (ASCITIS)’ under Army Rule 13 (3) item III (iii). Invaliding Medical Board held at Military Hospital, Gaya on 20.03.1989 considered the disability as attributable to military

service and assessed at 100% for two years. He was granted disability element and service element of disability pension for the same. His Re-survey medical Boards were held from time to time and individual was granted disability pension. His disability for the period from 30.01.2002 for life was assessed @ 30% by Re-survey Medical Board (RSMB) but medical representative at PCDA (P) reduced it to 11-14% for life. Accordingly, disability pension claim of the applicant was rejected by PCDA (P), Allahabad vide order dated 24.04.2002 being less than 20%. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant submitted that applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore any disability suffered by applicant after joining the service, should be considered as attributable to or aggravated by military service and he should be granted entitled to disability pension. Ld. Counsel for the applicant further submitted that the applicant's disability was found to be aggravated by military service and was assessed @ 100% for two years and applicant was granted disability pension for the same. Thereafter, various Re-Survey Medical Boards were held at different intervals and applicant was granted disability element through PPO placed on record. The last RSMB for the period from 30.01.2002 for life assessed applicant's disability @

30% for life. However, disability element was reduced to 11-14% (i.e. below 20%) for life by Medical Representative at PCDA (P), Allahabad and accordingly disability element was stopped vide order dated 24.04.2002 being disability below 20%. He submitted that pension sanctioning authority has no right to sit over the opinion of RSMB. He concluded by pleading for grant of disability element to applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that the RSMB has declared the applicant's disability as aggravated by military service and he was granted disability element for that period but submitted that disability percentage assessed from the period 30.01.2002 was reduced below 20% by Medical Representative at PCDA (P), Allahabad, therefore, the competent authority has correctly rejected claim of disability pension being disability less than 20% in terms of para 173 of Pensions Regulations for the Army, 1961, Part-1 which stipulates that primary condition for grant of disability pension is 'unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided out from service on account of a disability which is attributable to or aggravated by military service and is assessed @ 20% or over'. He pleaded for dismissal of O.A.

5. Heard Ld. Counsel for the parties and perused the material placed on record. We have also gone through the rejection order

of disability pension claim. The questions which need to be answered are of two fold :-

- (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 pension?

6. This is a case where the disability of the applicant has been held as aggravated by military service by the Invaliding Medical Board held at the time of discharge . The RSMB assessed the disability for the period from 30.01.2002 @30% permanent. However, the opinion of the RSMB has been overruled by Principal Controller of Defence Accounts (Pensions), Allahabad and the disability has been regarded as 11-14% (Below 20%).

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 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*** in Civil Appeal No 164 of 1993, decided on 14.01.1993, 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 RSMB 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) it is clear that the disability assessed @ 30% for life by RSMB for the period from 30.01.2002 cannot be reduced/overruled by Principal Controller of Defence Accounts (Pension), Allahabad and 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 @ 30% for life.

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 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 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. 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."*

11. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off 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.

12. In view of the above, the Original Application deserves to be allowed, hence **allowed**. The impugned order dated 24.04.2002 rejecting the claim of the applicant for grant of disability pension

is set aside. The disability of the applicant is held @ 30% for life as has been opined by RSMB. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% for life from w.e.f. three years preceding the date of filing this Original Application. The date of filing this Original Application is 23.03.2018. 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.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated : 12 July, 2021  
UKT/-