

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 625 of 2020**Tuesday, this the 06th day of July, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 2797793-N Ex. Naik Kadam Tukaram Akaram, son of Shri Akaram, presently residing at C/o Ajit Singh, House No. 2/1/36A, Near Head Post Office, Aroord Mohalla, Civil Lines, District – Fairzabad (U.P.), Pincode-224001.

..... Applicant

Ld. Counsel for the : **Shri V.P. Pandey**, Advocate
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, The MARATHA LI, PIN – 900499, C/o 56 APO.
4. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad-211014.

.....Respondents

Ld. Counsel for the : **Shri Yogesh Kesarwani**,
Respondents. 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.

- (a) *Issue/pass an order or direction of appropriate nature to the respondents to set-aside/quash the impugned order annexed as Annexure No. A-1(i), Annexure No.A-1(ii) and Annexure No. A-1(iii).*
- (b) *Issue/pass an order or direction of appropriate nature to the respondents to grant disability pension to the applicant from the date of discharge.*
- (c) *Issue/pass other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (d) *Allow this application with exemplary costs.*

2. Briefly stated, applicant was enrolled in the Indian Army on 02.02.2000 and was discharged on 01.07.2015 (AN) in Low Medical Category after rendering 15 years 04 months and 28 days of service under Rule 13 (3) Item III(iii)(a)(i) of the Army Rules, 1954. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Kota on 26.03.2015 assessed his disabilities (i) **‘PCL TEAR (RT) KNEE (OPTD)’** @20% for life, (II) **‘DISARTICULATION MTP JOINT 2ND (RT)’** @1 to 5% for life and (iii) **‘OPEN FRACTURE BASE OF PROXIMAL PHALANX 3RD TOE (RT)’** @1- 5% for life, composite disability

@30% for life and opined the disabilities to be attributable to by military service. The disability claim of the applicant was however rejected by the OIC Records The MARATHA LI vide letter dated 16.10.2015 on the ground that the disabilities (injuries) of the applicant were sustained by the applicant on 19.06.2012 while he was on Casual Leave and there is no causal connection with military service and hence, the disabilities were neither attributable to nor aggravated by military (NANA). The applicant preferred First Appeal and Second Appeal but that too were rejected by the respondents vide their letters dated 15.02.2017 and 26.12.2017 respectively. 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 disabilities was found to be attributable to by military service vide RMB dated 26.03.2015 which had also assessed the composite disability @ 30% for life. He further pleaded that at the time of enrolment, 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 in Army. The diseases (injuries) of the applicant were contacted during the military service. The injury report also shows that the injury sustained by the applicant is attributable to military service since it has occurred while performing bonafide military duty. He pleaded that various Benches of Armed Forces Tribunal have

granted 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 pension and its rounding off to 50%.

4. Ld. Counsel for the respondents conceded that composite disabilities of the applicant @30% for life has been regarded as attributable to military service by the RMB, but OIC Records, The MARATHA LI has rejected the claim of the applicant on the ground that the disabilities (injuries) of the applicant have no causal connection with the military service, they are neither attributable to nor aggravated by military service, hence applicant is not entitled to 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 Release Medical Board proceedings as well the records and we find that the questions which need to be answered are of two folds:-

- (a) Whether the OIC Record, The MARATHA LI 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 Attributable to by military service by the RMB which was held on 26.03.2015. The RMB assessed the composite disabilities @30% for life. However, the opinion of the RMB held on 26.03.2015 has been overruled by OIC Record, The MARATHA LI and the disability has been regarded as neither attributable to nor aggravated by military service being injuries sustained during Casual Leave and not related to 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 i.e. OIC Records, The MARATHA LI overruling the opinion of RMB held on 26.03.2015 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 disabilities assessed by RMB on 26.03.2015 cannot be reduced/overruled by OIC Records, The MARATHA LI, hence the decision of OIC Records, The MARATHA LI is void. Hence, we are of the opinion that the disabilities of the applicant should be considered as attributable to by military service as has been opined by the RMB dated 26.03.2015.

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. 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 No. 625 of 2020 deserves to be allowed, hence **allowed**. The impugned orders dated 16.10.2015, March 2017, 15.02.2017, 26.12.2017 and 11.12.2017 annexed as Annexure Nos. A-1(i), A-1(ii) and A-1(iii) of Original Application, are set aside. The disabilities of the applicant are held as attributable to by Military Service as has been opined by RMB dated 26.03.2015. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% w.e.f.

three years preceding the date of filing the Original Application. The respondents are directed to grant disability element 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 this Original Application. The date of filing this Original Application is 15.05.2019. 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 : 06 July, 2021

AKD/-