

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW  
(CIRCUIT BENCH AT NAINITAL)**

**ORIGINAL APPLICATION No. 454 of 2021**

Tuesday, this the 31<sup>st</sup> May, 2022

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

No. 14518360X Ex HMT, Bhagwan Singh Rawat, S/o Sri Bajo Singh Rawat, R/o Nilanchal Colony, Farm No 3, PO Manpjur West, Tehsil- Haldwani, District- Nainital

..... Applicant

Ld. Counsel for the : **Shri Sandeep Adhikari, Advocate.**  
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of the Army Staff, Sena Bhawan, New Delhi.
3. Adjutant General, Infantry-6, Army Headquarter, DHQ PO New Delhi.
4. PCDA (P), Draupadi Ghat, Allahabad, Uttar Pradesh.
5. EME Record Secunderabad- 500021.

.....**Respondents**

Ld. Counsel for the : **Shri Neeraj Upreti,**  
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:-

*“4.1 To issue order or direction to quash the impugned order no. 7/816/93/Def/Pen/3 dated 11.04.1994 issued by respondent no. 1 (contained as Annexure No A-1) also calling the entire records from the respondents.*

*4.2 Issue an order or direction to the respondents to grant the disability pension for further life of the applicant as early as possible along with 9% interest per annum had it been the impugned orders were never in existence.*

*4.3 Any other relief which the Hon’ble Court may deem fit and proper in the circumstances of the case.*

*4.4 To award the cost of this petition to the Applicant.*

2. Briefly stated, applicant was enrolled in Indian Army on 22.07.1974 and was discharged on 31.10.1992 in Low Medical Category BEE (Permanent) under Army Rule 13 (3) III (v). At the time of retirement from service, the Release Medical Board (RMB) assessed his disability ‘**ESSENTIAL HYPERTENSION**’ @ 30% for two years and opined the disability to be aggravated

by military service. The applicant is getting service element. The claim of disability element was rejected by Medical Advisor at Principal Controller of Defence Accounts (Pensions), Allahabad vide letter dated 31.01.1993 considering the disability as neither attributable to nor aggravated by military service. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian 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 disease of the applicant was contacted during the service and it was assessed @ 30% for two years and considered as aggravated by Military Service. Medical Advisor at PCDA (P), Allahabad has wrongly considered the disability of the applicant as neither attributable to nor aggravated by military service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element in similar cases, as such the applicant be granted disability element as well as arrears thereof. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability element, as

such the applicant is entitled to disability element and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that on retirement from service applicant was granted service element and death cum retirement gratuity and commutation. Claim for grant of disability element of the applicant was submitted to PCDA (P), Allahabad. Medical Advisor at PCDA (P), Allahabad assessed the disability of the applicant @ 30% for two years but considered as neither attributable to nor aggravated by military service. Since the applicant was not fulfilling the conditions for grant of same as envisaged in para 173 of Pension Regulations for the Army, 1961 (Part-I), he was not granted disability element. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB and we find that the questions which need to be answered are of two folds :-

- (a) Whether the applicant is entitled for grant of disability element while Medical Advisor at PCDA (P), Allahabad has assessed the disability as neither attributable to nor aggravated by military service?

(b) Whether the applicant is entitled for the benefit of rounding off of his disability element, if yes, from which date?

6. This is a case where the disability of the applicant was held as Aggravated by military service by the RMB. The RMB assessed the disability @30% for two years. However, the opinion of the RMB was overruled by Medical Advisor at Principal Controller of Defence Accounts (Pensions), Allahabad and the disability was regarded as neither attributable to nor 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 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 Medical Advisor at Principal Controller of Defence Accounts (Pensions), Allahabad over ruling the opinion of RMB 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 by RMB as aggravated by military service cannot be overruled by Medical Advisor at Principal Controller of Defence Accounts (Pension), Allahabad and hence the decision of Principal Controller of Defence Accounts (Pensions), Allahabad is void. We are of the opinion that the disability of the applicant should be considered as attributable to and aggravated by military service as was opined by the RMB.

9. As far as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, and applicant was discharged from service on 01.11.1992 hence, prima facie the applicant is not entitled to broad banding of disability element.

10. Since the applicant's RMB was valid for two years from the date of discharge, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability element.

11. In view of the above, the **O. A.** deserves to be allowed, hence, **allowed**. The impugned order passed by the respondents rejecting the claim of disability element is set aside. The disability of the applicant is held as aggravated by Military Service as was opined by RMB. The applicant is entitled to get disability element @ 30% for two years from the next date of discharge of the applicant i.e. 01.11.1992. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of

this order failing which the respondents shall have to pay interest @ 8% per annum from date of order till the date of actual payment.

12. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated : 31 May, 2022

Ukt/-