

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 223 of 2022.**Thursday, this the 07th day of July, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**DS-12273 P Lt. Col. Mukesh Kumar (Retd,) MDL 11, Sector 11,
Aliganj, Lucknow, Uttar Pradesh-226024.**..... Applicant**Ld. Counsel for the : **Shri J.L. Joel**, Advocate.
Applicant

Versus

1. The Union of India, Through the Secretary Government of India, Ministry of Defence, South Block, New Delhi 110011.
2. Chief of Army Staff, IHQ of MoD (Army), New Delhi 110011.
3. Addl. Dte. Gen. MP (P&P) ORO/MP-7/Adjudication Cell, West Block-III, R.K. Puram, New Delhi 110066.
4. DGMS (Army) / MPRS (O) Integrated HQ of MoD (Army), ‘L’ Block, New Delhi 110001.
5. MPRS (O) Adjutant General’s Branch, Integrated HQ of MoD (Army), ‘L’ Block, New Delhi 110001.
6. The PCDA (Pension), Draupadi Ghat, Allahabad (U.P)-211014.
7. Sr AO, Pension Cell, PCDA(O), Pune, Golibar Maidan, Pune- 411040.

.....RespondentsLd. Counsel for the : **Shri Yogesh Kesarwani**, Advocate
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. *To quash or set aside Respondents’ letter dated 05.11.2021 about IHQ of MoD AG/MP-7 (ORO)’s adjudication Cell letter No. DS -12273/MPRS (O)/163/2021/AG/MP (ORO) dated 29.10.2021 rejecting the initial disability pension of the Applicant and /or.*
- B. *To direct the Respondents to grant Disability Element to the Applicant from the date of release from service with effect from 07.01.2022 and to pay arrears along with rounding off benefits @ 50% as per rules with suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal and /or.*
- C. *Any other relief as this Hon’ble Tribunal may deem fit in the interest of justice and good conscience.*

2. Briefly stated, applicant was commissioned in the Army Dental Corps of Indian Army on 07.01.2008 and was released from service on 06.01.2022 in Low Medical Category after completion of contractual period. At the time of release from service, the Release Medical Board (RMB) held at Command Hospital (Central Command), Lucknow on 07.06.2021 assessed his disabilities (i) **‘CERVICAL SPONDYLOSIS C5 C6 (M50.022)’ @ 20% for life** and (ii) **‘LUMBAR SPONDYLOSIS L5-S1(M47.817)’ @20% for life, Composite disabilities @36% for life** and opined the disabilities to be **aggravated** by service. The applicant’s claim for grant of

disability pension was rejected vide letter dated 29.10.2021 which was communicated to the applicant vide letter dated 05.11.2021. The applicant preferred First Appeal which too was rejected vide letter dated 10.03.2022 which was communicated to the applicant vide letter dated 04.04.2022. 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 composite disabilities @36% for life. He further submitted that 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 pension and its rounding off to 50%.

4. Ld. Counsel for the respondents conceded that composite disabilities of the applicant @36% for life have been regarded as **aggravated by** the RMB, but pension sanctioning authority i.e. competent authority has not approved the claim of the applicant on the ground that the disabilities are neither attributable to nor aggravated by military service, hence as per Regulation 81 of the Pension Regulations for the Army, 2008 (Part – I) the 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 records and we find that the questions which need to be answered are of 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 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 composite disabilities @36% for life. However, the opinion of the RMB has been overruled by the competent authority and the claim of the applicant for grant of disability pension has not been approved.

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. Principal Controller of Defence Accounts (Pensions), Allahabad over ruling the opinion of RMB held on 27.01.1999 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 competent authority by holding that disabilities are neither attributable to nor aggravated by military service, hence the decision of competent authority is void. Hence, we are of the opinion that the disabilities 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 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. 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*** 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 pension @36% for life to be rounded off to 50% for life may be extended to the applicant with effect from the next date of his release.

12. In view of the above, the **Original Application No. 223 of 2022** deserves to be allowed, hence **allowed**. The impugned

orders, not approving the applicant's claim for grant of disability pension, are set aside. Both the disabilities of the applicant are held as aggravated by Army Service as has been opined by the RMB. The applicant is entitled to get disability pension @36% for life which would be rounded off to 50% for life from the next date of his release. The respondents are directed to grant disability pension to the applicant @36% for life which would stand rounded off to 50% for life from the next date of his release. The respondents are further 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 the actual payment

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 07 July, 2022

AKD/-