

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 40 of 2022**Friday, this the 15th day of July, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

095043-H PO RCI Executive Amanat Tullah, son of Shri Abdul Razak, resident of Village & Post Office – Dildar Nagar, Near Dr. N.N. Tiwari Hospital, District – Ghazipur (U.P.)-232326.

..... ApplicantLd. Counsel for the Applicant : **Shri V.P. Pandey**, Advocate and
Shri R.K. Singh, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Naval Staff, Naval Headquarters, Integrated Headquarters of the Ministry of Defence (Navy), South Block, B-28, New Delhi-110011.
3. Officer In-Charge Records, Commodore Bureau of Sailors, Mankhurd, Mumbai-400088.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)-211014.

.....RespondentsLd. Counsel for the Respondents. : **Shri Amit Jaiswal**, Advocate
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 summon and quash/set aside the impugned rejection order, if any, with regard to claim of disability element being arbitrary and illegal.*
- (b) *To issue/pass an order or direction to the respondents to grant 20% disability pension for two years to the applicant from the date of discharge w.e.f. 30.03.1991.*
- (c) *Issue/pass an order or direction of appropriate nature to the respondents to conduct Re-Survey Medical Board (RSMB) and grant disability pension assessed by RSMB and the benefit of rounding off of disability pension w.e.f. 01.01.1996.*
- (d) *Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- (e) *Cost of the O.A. be awarded to the applicant.*

2. Briefly stated, applicant was initially enrolled in the Indian Navy on 18.09.1968 and was discharged on 30.03.1991 (AN) after completion of 23 years, 04 months and 23 days of service in Low Medical Category. At the time of discharge from service, the Release Medical Board (RMB) held at assessed his disability **‘POLY ARTHRITIS 714 (B)’ @20%** for two years and opined the disability to be **attributable to** service due to infection/post infective allergic inflammation in service. The disability claim of the applicant was however rejected by the Principal Controller of Defence Account (Navy), Mumbai vide letter dated 28.06.1991 on the ground that the disability of the applicant was constitutional in nature. The applicant preferred an application dated 20.05.2021

under Right to Information Act which was replied by the respondents vide letter dated 09.06.2021. 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 two years. He further submitted that Principal Controller of Defence Accounts (Navy), Mumbai 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 disability of the applicant @20% for two years has been regarded as attributable to service by the RMB, but pension sanctioning authority i.e. Principal Controller of Defence Accounts (Navy), Mumbai has rejected the claim of the applicant on the ground that the disability of the applicant is constitutional in, hence applicant is not entitled to disability element of 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 Principal Controller of Defence Accounts (Navy), Mumbai has authority to overrule the opinion of RMB?
- (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 aggravated by military service by the RMB. The RMB assessed the disability @20% for two years. However, the opinion of the RMB has been overruled by Principal Controller of Defence Accounts (Navy), Allahabad and the disability has been regarded as constitutional in nature.

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 (Navy), Mumbai over ruling the opinion of RMB held at the time of discharge of the applicant 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 Principal Controller of Defence Accounts (Navy), Mumbai, hence the decision of Principal Controller of Defence Accounts (Navy), Mumbai is void. Hence, we are of the opinion that the disability of the applicant should be considered as attributable to Naval service as has been opined by the RMB.

9. As for as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding for period in question i.e. two years from 31.03.1991.

10. Since the applicant's RMB was valid for two years w.e.f. 31.03.1991, hence, the respondents will now have to conduct a

fresh Re-Survey Medical Board for him to decide his future eligibility to disability element of disability pension.

11. In view of the above, the **Original Application No. 40 of 2022** deserves to be allowed, hence **allowed**. The impugned order, rejecting 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 Naval Service as has been opined by RMB. The applicant is entitled to get disability element @20% for two years from the next date of his discharge. The respondents are directed to grant disability element to the applicant @20% for two years from the next date of his discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element of disability pension. 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.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 15 July, 2022

AKD/-