

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 308 of 2023**Friday, this the 14th day of July, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Ex Nk/TS Sita Ram Dubey (No. 4170335)
 S/o Late Sri Ram Bodh Dubey
 Village – Ram Pur Girant, PO – Bathua, Bhati,
 District - Ambedkar Nagar, PIN-224132

..... Applicant

Ld. Counsel for the Applicant : **Col AK Srivastava (Retd)**, Advocate

Versus

1. The Secretary, Govt. of India (MoD), South Block, DHQ PO, New Delhi – 110001.
2. The Chief of Army Staff, Integrated HQ of MoD (Army), South Block, DHQ PO, New Delhi – 110001.
3. Officer Commanding Records, The Mech Inf Regt, Ahmadnagar (Maharashtra).
4. Principal Controller of Defence Accounts PCDA (P), Draupadi Ghat, Allahabad – 211014.

.....Respondents

Ld. Counsel for the Respondents : **Ms. Appoli Srivastava**, Advocate
 Central Govt. Counsel

ORDER (Oral)**“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 summon and quash/set aside any such order or direction leading to denial of his War Injury Disability Pension w.e.f. 01.11.1992 since his said disability due to fracture of 2, 3 & 4 metatarsals of left leg had occurred in a Field/Ops in HAA of Karu, Leh and thereafter direct PCDA (P) Allahabad to disburse the arrears of entitled war injury of disability element of pension accordingly.

(b) Issue/pass an order or direction of appropriate nature to the respondents to summon and quash/set aside any such order or direction leading to denial of his 20% disability element of pension w.e.f. 11 Feb 1994 despite its sanction for 2 years, i.e. till 01.10.1992 and thereby disburse his remaining about 7 months of 20% disability element of pension with 18% compound rate of interest.

(c) Issue/pass an order or direction of appropriate nature to the respondents to summon and quash set aside PCDA (P) Allahabad arbitrary and illegal order, dated 10 Feb 1994, reducing applicant's disability assessed by RSMB held in Sep 1993 as 20% (for 5 years) to 11-14% leading to denial of his 20% disability element which was to continue till 01/10/1999 with rounding off to 50% wef 01/01/1994. The applicant was invalid out after 15 years service instead of entitled 17 years in the rank of a Nk (TS).

(d) Issue/pass an order or direction of appropriate nature to the respondents to re-assess the disability of the applicant with effect from 01/10/1999, assessed as NIL vide RSMB dated 04/01/1999, evidently relying on PCDA (P) Allahabad action in Feb 1994 vide which they reduced applicant's disability assessed by RSMB held in Sep 1993 as 20% (for 5 years) to 11-14% (reduced by 6-9%) and thereby denying his entitled 20% disability element of pension on the ground that his disability was below 20%.

Whereas the nature of disability is such that it cannot be NIL and hence applicant was entitled to 50% disability element of pension after rounding off even if his disability was 1% since he was invalided out from service premature 15 years service against his entitled 17 years being a Nk (TS).

(e) Pass any other order or direction as deemed appropriate by the Hon'ble Tribunal.

(f) Allow this application with costs and interest @ 18% on due entitlements for aforesaid respective periods."

2. Briefly stated, applicant was initially enrolled in the Indian Army on 03.09.1977 and was discharged on 30.09.1992 (AN) in Low Medical Category under Rule 13 (3) Item III (i) of the Army Rules, 1954 after rendering 15 years & 28 days of service. At the time of discharge from service, the Release Medical Board (RMB) held at 153 General Hospital on 12.02.1992 assessed his disability '**FRACTURE II/III/IV METATARSAL (LT)**' @ 20% for two years and opined the disability to be attributable to military service. The disability element claim of the applicant was admitted and Principal Controller of Defence Account (Pensions), Allahabad granted 20% disability element for two years from 01.10.1992 to 11.02.1994. Thereafter, RSMB of the applicant held in Base hospital, Lucknow on 10.11.1993 and assessed his disability @ 20% for five years w.e.f. 10.11.1993, however, Medical Advisor (Pension), PCDA (P) Allahabad assessed his disability @ 11-14%, i.e. less than 20% for five years and rejected the claim of the applicant vide letter dated 24.02.1994. On completion of five years,

applicant was again brought before RSMB at Base hospital, Lucknow on 04.01.1999 and assessed his disability Nil for life. Accordingly, PCDA (P) Allahabad rejected the disability element claim of the applicant vide letter dated 07.04.1999. The applicant approached the respondents but nothing materialised and applicant was denied disability element w.e.f. 12.02.1994. 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 as attributable to military service. The applicant was paid disability element @ 20% from 01.10.1992 to 11.02.1994 and thereafter, it was stopped whereas it was sanctioned for two years. The RSMB of the applicant was held on 10.11.1993 and assessed applicant's disability @ 20% for five years w.e.f. 01.10.1994 to 30.09.1999 but Medical Advisor (Pension) at PCDA (P) Allahabad reduced the percentage from 20% to 11-14% and rejected the claim of the applicant illegally. Thereafter, RSMB of the applicant was held on 04.01.1999 and assessed his disability Nil for life.

4. Learned counsel for the applicant further submitted that MAP is not empowered to reduce the percentage of disability assessed by the Medical Board. In this regard, he placed reliance on the judgment of the Hon'ble Apex Court in the case of **Sapper Mohinder Singh** and pleaded that applicant should be granted

disability element of pension @ 20% from the date it was stopped till life granting rounding off benefit to 50% being a case of invalidation as applicant was to service for 17 years in the rank of Nk (TS) whereas he was discharged from service after completion of 15 years only.

5. Ld. Counsel for the respondents conceded that disability of the applicant @20% for two years has been granted to the applicant from the date of discharge from service and thereafter in RSMB the disability was assessed @ 20% for five years but the same was reduced from 20% to 11-14% by the Medical Advisor (Pension) and therefore, under the provisions of Rule 53 of Pension Regulations for the Army, 2008, the applicant is not entitled to disability element of pension. He pleaded for dismissal of the Original Application.

6. 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 (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?

7. This is a case where the disability of the applicant has been held as attributable to military service by the RMB. The RSMB

assessed the disability @20% for five years. However, the opinion of the RSMB has been overruled by Principal Controller of Defence Accounts (Pensions), Allahabad and the disability has been reduced from 20% to 11-14% for five years and claim of the applicant was rejected.

8. 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 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.”

9. 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/RSMB cannot be reduced/overruled by Principal Controller of Defence Accounts (Pension), Allahabad, 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 treated @ 20% for five years as attributable to military service as has been opined by the RSMB and applicant is held entitled to the disability element of pension @ 20% for five years.

10. 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."*

11. As such, in view of the decision of Hon'ble Supreme Court in the case of **Ram Avtar** (supra) as well as Government of India, Ministry of Defence letter dated 31.01.2001, we are of the considered view that benefit of rounding off of disability pension @ 20% for five years to be rounded off to 50% for five years may be extended to the applicant from 01.01.1996, i.e. from the date of applicability of rounding off benefit.

12. Since the applicant's RMB was valid for two years w.e.f. 01.10.1992 to 30.09.1994 but the applicant has been paid disability element upto 11.02.1994 only, therefore, applicant is entitled to disability element of pension for two plus five years, i.e. seven years upto 30.09.1999. Since the applicant has been paid disability

element of pension from 01.10.1992 to 11.02.1994 only, hence, he is entitled to disability element of pension from 12.02.1994 to 30.09.1999. The applicant will also be entitled to the benefit of rounding off of disability element from 01.01.1996 to 30.09.1999 as per Govt. of India, Ministry of Defence letter dated 31.01.2001.

13. The applicant is not entitled any further disability element of pension from 01.10.1999 onwards being his disability assessed @ Nil % for life by the subsequent RSMB held on 04.01.1999 at Base Hospital, Lucknow.

14. In view of the above, the **Original Application No. 308 of 2023** 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. Since the applicant has been paid disability element of pension from 01.10.1992 to 11.02.1994 only, hence, the respondents are directed to grant 20% disability element of pension from 12.02.1994 to 31.12.1995 and 20% disability element duly rounded off to 50% disability element of pension for the period from 01.01.1996 to 30.09.1999. 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.

15. No order as to costs.

(Vice Admiral Atul Kumar Jain) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated : 14th July, 2023
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