

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 520 of 2022**Thursday, this the 20th day of July, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 1571868H, Ex. L/Hav DPMT, Sant Ram Sharma, S/o Shri Ram Sharan Sharma, R/o Village – Barra, Post Office – Ucha Gaon, Tehsil-Bukagram, District – Hardoi, State – Uttar Pradesh, Pin -241002.

..... Applicant

Ld. Counsel for the Applicant : **Shri Manoj Kumar Awasthi**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi -110010.
2. Chief of the Army Staff, IHQ MoD (Army), South Block, New Delhi.
3. Officer –in-Charge, Records, Bombay Engineer Group, Pin-908796, C/o 56 APO.
4. PCDA (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the Respondents : **Shri Rajiv Pandey**, 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 issue/pass an order to set aside quash the letter /order No. G3/55/9/104 Dated 23.03.2004 and letter /order no.*

1571868/07/D/Pen Dated 18.05.2004 and order /letter No. 1571868H/D/Pen Dated 15 March 2022 passed by respondents.

- B. To issue /pass an order or directions to the respondents to grant disability element of disability pension @50% from date of SOS i.e. 01.11.2003 [date of discharge 01.07.2001] along with interest @12% on arrear in light of Hon'ble Apex Court.*
- C. To issue/pass an order or directions to the respondents to grant benefit of rounding off disability pension to the tune of @75% from date of SOS i.e. 01.11.2003 [date of discharge 01.07.2001] along with interest @12% on arrear in light of Hon'ble Apex Court.*
- D. To issue /pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- E. To allow this original application with costs.*

2. Briefly stated, applicant was enrolled in the Indian Army on 12.07.1984 and discharged on 31.10.2003 in Low Medical Category after rendering 19 years, 03 months and 17 days of service before completion of terms of engagement under Rule 13 (3) Item III (iii) (v) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at 162 Military Hospital on 09.09.2003 assessed his disabilities (i) **'ANKYLOSING SPODYELITIS (M-45)'** @30% for life as neither attributable to nor aggravated (NANA) by service and (ii) **'RECURRENT ANTERIOR UVEITIS (LT) EYE (H-20)'** @ 20% for life as **aggravated** by service, **composite disabilities @50% for life**. The disability claim of the applicant was however rejected by the Principal Controller of Defence Account (Pensions), Allahabad vide letter dated 23.03.2004 on the ground that the disabilities of the applicant was

neither attributable to nor aggravated by military service which was communicated to the applicant vide letter dated 18.05.2004. The applicant preferred First Appeal which too was rejected vide letter dated 15.03.2022. 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 first disability was found @30% for life to be NANA by the RMB and the second disability was found @20% for life to be **aggravated by** military service by the RMB. 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. He further submitted that Principal Controller of Defence Accounts (Pension), Allahabad has no authority to overrule the opinion of RMB for the second disability. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to 75%.

4. Ld. Counsel for the respondents conceded that the first disability of the applicant @30% for life has been regarded as NANA and the second disability of the applicant @20% for life has been regarded as **aggravated** by the RMB, but pension sanctioning authority i.e. Principal Controller of Defence Accounts (Pensions), Allahabad has rejected the claim of the applicant on the ground that both the disabilities of the

applicant is neither attributable to nor aggravated by military service, 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 three folds:-

- (a) Whether the first disability of the applicant is also attributable to or aggravated by Military Service?
- (b) Whether the Principal Controller of Defence Accounts (Pensions), Allahabad has authority to overrule the opinion of RMB with regard to second disability?
- (c) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service

in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

7. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that

the first disability '**ANKYLOSING SPODYELITIS (M-45)**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of first disability in April 1993, therefore, applicant is not entitled to disability element pension for first disability. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability element of disability pension to applicant for the first disability is not convincing and doesn't reflect the complete truth on the matter. The applicant was enrolled in Indian Army on 12.07.1984 and the first disability has started after more than 8 years of Army service i.e. in April 1993. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra), and the first disability of the applicant should be considered as aggravated by military service.

8. Further, this is a case where the second disability of the applicant has been held as aggravated by military service by the RMB. The RMB assessed the disability @20% for life. However, the opinion of the RMB has been overruled by Principal Controller of Defence Accounts (Pensions), Allahabad and the second disability has been regarded as neither attributable to or aggravated by military service.

9. 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 09.09.2003 in respect of second disability 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.”

10. 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 second disability assessed by RMB 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 second disability of the applicant should be considered as aggravated by military service as has been opined by the RMB.

11. 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 January 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 invalided 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."*

12. 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.

13. 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.”

14. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)** 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 element of disability pension @ 50% for life to be rounded off to 75% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

15. In view of the above, the **Original Application No. 520 of 2022** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. Both the disabilities of the applicant are held as aggravated by Army Service. The applicant is entitled to get disability element @50% for life which would be rounded off to 75% for life w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @50% for life which would stand rounded off to 75% for life w.e.f. three years preceding the date of filing of Original Application. The date of

filing of Original Application is 01.07.2022. 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

16. No order as to costs.

17. Ld. Counsel for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 20 July, 2023

AKD/-