

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 1253 of 2023**Friday, this the 05<sup>th</sup> day of July, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

Brig. Tapan Kumar Sahoo MR05790K (Retd.), Son of Late Biswanath Sahoo, Permanent Address – 88-B, Aakriti Exotica, Khajuri Sadak, Bhopal – 462030 at Present Address, C/o Geeta Singh, House No 590-P/082/23, Gangajipuram Colony, Charan Bhatta Road, Near S.G.P.G.I., Raibareli Road, Lucknow-226014.

**..... Applicant**

Ld. Counsel for the Applicant : **Shri Ajay Kumar Pandey**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. The Chief of Army Staff, Integrated Head Quarter, Ministry of Defence (Army), Govt. of India, New Delhi.
3. The P.C.D.A. (Pension), Draupadi Ghat, Allahabad, U.P.-211014.
4. The Chairman A.C.F.A. through the Director General of Medical Services (Army), IHQ of MoD (Army), Adjutant Generals Branch, 3<sup>rd</sup> Floor, ‘A’ Block, Defence Office Complex, K.G. Marg, New Delhi-01.
5. The Chairman S.A.C.P. through the Director General of Medical Services (Army), M.P.R.S. (O) I.HQ. of MoD (Army), Adjutant Generals Branch, 3<sup>rd</sup> Floor, ‘A’ Block, Room of 334 Defence Office Complex, K.G. Marg, New Delhi-01.

**.....Respondents**

Ld. Counsel for the Respondents. : **Ms. Prerna Singh**, Advocate  
Central Govt. Standing Counsel

## ORDER

### “Per Hon’ble Mr. Justice Anil Kumar, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

*“8.1 Hon’ble Tribunal may graciously be pleased to set aside the impugned order dated 19.01.2023 (Annexure A-1) and the impugned order dated 01.04.2022 (Annexure A-2) and grant the disability element considering those disabilities attributable/ aggravated to service.*

*8.2 Hon’ble Tribunal may please to further to grant benefit of disability pension with interest from the date of release to the date of actual payment.*

*8.3 Any other appropriate order or direction which the Hon’ble tribunal may deem fit, just and proper in the nature and circumstances of the case may be passed in favour of the applicant.”*

2. Briefly stated, applicant was commissioned in the Army Medical Corps of Indian Army on 31.07.1987 and retired on 30.06.2021 in Low Medical Category on attaining the age of superannuation. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Bhopal on 09.11.2020 assessed his disabilities (i) **‘PRIMARY HYPERTENSION ( I 10)’ @30% as aggravated by service** and (ii) **‘PRIMARY HYPOTHYROIDISM (E03.0)’ @10%**, as neither attributable to nor aggravated (NANA) by service, **composite**

**disabilities @37% for life.** However, the applicant's claim for grant of disability pension was 'NOT APPROVED' by the competent authority vide letter dated 01.04.2022. The applicant preferred First Appeal which too was rejected vide letter dated 19.01.2023. The applicant preferred Second Appeal which too was rejected vide letter dated 10.11.2023. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of commission, 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 commission in Army. The applicant's first disease has been regarded as aggravated by service by the RMB but without having any authority the Competent Authority has overruled the opinion of the RMB and 'Not Approved' the applicant's claim for the grant of disability element of disability pension on the ground that the disability do not fulfil the eligibility conditions as laid down in existing rules/provision for the grant of disability element and regarded the aforesaid disability as NANA. The second disability of the applicant was also contracted during the service, hence it is also attributable to and aggravated by Military Service. 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 50%.

4. On the other hand, Ld. Counsel for the respondents contended that although the first disability of the applicant has been regarded as aggravated by service by the RMB but the Competent Authority has 'Not Approved' the applicant's claim for the grant of disability element of disability pension on the ground that the disabilities do not fulfil the eligibility conditions as laid down in existing rules/provisions for the grant of disability element. Further, the second disability of the applicant has been regarded as NANA by the RMB, hence as per Regulation 81 and Regulation 37 (a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that "*An Officer who retires on attaining the prescribed age of retirement or on completion of tenure, if found suffering on retirement, from a disability which is either attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted in addition to the retiring pension admissible, a disability element from the date of retirement if the degree of disability is accepted at 20% or more*" the applicant is not entitled to disability element of disability pension. She 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 Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are three folds:-

- (a) Whether the competent authority has authority to overrule the opinion of the RMB?
- (b) Whether the second disability of the applicant is attributable to or aggravated by Military Service?
- (c) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. This is a case where the first disability of the applicant has been held as aggravated by service by the RMB. The RMB assessed the first disability @30% for life. However, the opinion of the RMB has been overruled by Competent Authority and the first disability has also been regarded as NANA by 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 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 over ruling the opinion of RMB held on

09.11.2020 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 the Competent Authority, hence the decision of Competent Authority with regard to first disability is void. Hence, we are of the opinion that the first disability of the applicant should be considered as aggravated by military service as has been opined by the RMB.

9. Further, 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)."*

10. 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 second disability '**PRIMARY HYPOTHYROIDISM (E03.0)**' is neither attributable to nor aggravated (NANA) by service on the ground the disability is not due to post-therapeutic/post diagnostic intervention/autoimmune causes, therefore, applicant is not entitled to disability element of disability pension. 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 second disability is cryptic, not convincing and doesn't reflect the complete truth on the matter. The applicant was commissioned in Indian Army on 31.07.1987 and the second disability has started after more than 30 years of Army service i.e. in March, 2018. 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 second disability of the applicant should be considered as aggravated by military service.



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 10<sup>th</sup> 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."*

12. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017/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. 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 (supra)*** as well as Government of India, Ministry of Defence letter No. 17(01)/2017/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @37% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his retirement.

14. In view of the above, the **Original Application No. 1253 of 2023** 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. The first disability of the applicant is held as aggravated by Army Service as has been opined by the RMB. The second disability of the applicant has also been held as aggravated by Army Service. The applicant is entitled to get disability element @37% for life which would be rounded off to 50% for life from the next date of his retirement. The respondents are directed to grant disability element to the applicant @37% for life which would stand rounded off to 50% for life from the next date of his retirement. 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.

15. No order as to costs.

(Lt. Gen. Anil Puri)  
Member (A)

(Justice Anil Kumar)  
Member (J)

Dated : 05 July, 2024

AKD/-