

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 121 of 2019**

Wednesday, this the 27th day of March, 2019

**"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"**

JC-212742-W Subedar Bhisham Singh (Retired), Son of Late Ram Narayan Singh, R/O House No 147/A, Prem Nagar, Nariyal Kheda, Bhopal (MP), at present residing with his son Subedar Sepahi Singh, Qtr No 12/01, GFA Line, Lucknow Cantt-226002 (UP).

..... Applicant

Ld. Counsel for the : **Shri R. Chandra**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army) DHQ, Post Office, New Delhi-11.
3. The Officer-In-Charge Records The Bihar Regiment, PIN-908765, C/O 56 APO.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the
Respondents.

:**Dr. S.N. Pandey**,
Central Govt. Standing Counsel

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

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

(i) The Hon’ble Tribunal may be pleased to set aside the rejection order dated 17.01.2002 (Annexure No A-1) and order dated 07.08.2017 (Annexure No A-2).

(ii) The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01.07.2001 to 30.06.2004 along with its arrears and interest thereon at the rate of 18% per annum. Further respondents be directed to organize Re-Survey Medical Board for further assessment of the disability of the applicant.

(iii) Hon’ble Tribunal may be pleased further to grant benefit of rounding off of disability pension @ 50% in terms of Ram Avtar’s case.

(iv) Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.

2. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of 16 years, 01 month and 22 days. Since payment of pension involves recurring cause of action, as such, the delay was condoned vide order dated 27.02.2019.

3. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 19.12.1975 and was discharged from service with effect from 30.06.2001 before completion of terms of engagement in low medical category P2 (permt) for the disease (i) Essential

Hypertension and (ii) Obesity. Release Medical Board (RMB) considered the disability due to essential hypertension as 30% and obesity as 6-10% for three years and considered essential hypertension as aggravated by military service and obesity as neither attributable to nor aggravated (NANA) by military service. Composite disability was considered as 40%. His claim for grant of disability pension was forwarded to PCDA (P) Allahabad but it was rejected vide order dated 12.11.2001 and intimated to the applicant vide letter dated 17.01.2002 on the grounds that the disability is neither attributable to nor aggravated by military service. Thereafter, the applicant preferred his appeal against the rejection of his claim but it seems to be pending. Aggrieved, the applicant has filed this Original Application.

4. Learned Counsel for the applicant submitted that at the time of enrolment, the applicant was examined by the Medical Board and was found medically and physically fit for a service in the Indian Army and there is no note, whatsoever, in his service documents that he was suffering from any disease at the time of entry in service. Ld. Counsel for the applicant further submitted that applicant is entitled to disability pension in view of Para 173 of the Pension Regulations (Part-I) 1961, since his

disability 'Essential Hypertension' has been considered as aggravated by military service by RMB, however, PCDA (P) Allahabad has overruled the recommendation of RMB and declared the disease as neither attributable to nor aggravated by military service. He pleaded that the applicant should be granted disability pension as per recommendation of RMB.

5. Per contra, Ld. Counsel for the respondents submitted that the RMB had opined applicant's first disability 'Essential Hypertension' as aggravated by military service and the second disability 'Obesity' as NANA and assessed the first disability @ 30% for three years and composite disability has been considered @ 40% for three years but the pension sanctioning authority i.e. PCDA (Pension) Allahabad in consultation with Medical Advisor (Pension) attached to their office has considered the disability as neither attributable to nor aggravated by military service. As such his claim for disability pension has been rightly rejected in accordance with Para 173 of the Pension Regulations for the Army, 1961 (Part-I) which clearly states that disability pension is admissible to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by military service and is assessed at 20% or more.

6. Heard Shri Shri R. Chandra, Ld. Counsel for the applicant and Dr. S.N. Pandey, Ld. Counsel for the respondents and perused the record. We have also perused the RMB proceedings.

7. It is observed that in the instant case the PCDA (P) has overruled the opinion of the RMB and declared the first disability i.e. 'Essential Hypertension' as neither attributable to nor aggravated by military service. The issue of sanctity of the opinion of a medical board and its overruling by a higher formation is no more Res Integra. The Hon'ble Supreme Court has made it clear that without physical medical examination of the 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** in Civil Appeal No 104 of 1993 decided on 14.01.1993, we are of the considered opinion that the decision of PCDA (P), Allahabad in over ruling the opinion of RMB 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. Learned counsel for the applicant has also pleaded in the petition for the benefit of rounding off of disability pension and has also made oral prayer for the same. Thus in consonance with the Policy Letter No.1(2)/97/D (Pen-C) dated 31.01.2001 and in terms of the decision of Hon'ble Apex Court in the case of ***Union of India and Ors vs. Ram Avtar & ors*** Civil Appeal No 418 of 2012 dated 10th December 2014), we are of the view that in principle the applicant is entitled to the benefit of rounding off. However, due to law of limitations given by the Hon'ble Supreme Court vide order dated 13.07.2018 in Civil Appeal Diary No 21811 of 2018, ***Union of India through its Secretary & Ors vs. Sgt Girish Kumar and Shiv Dass versus Union of India*** reported in 2007 (3) SLR 445, he shall not be entitled to the benefit of rounding off for the period in question i.e. 01.07.2001 to 30.06.2004.

9. Thus in the result, the Original Application succeeds and is **Partly allowed**. The impugned orders dated 17.01.2002 and 07.08.2017 are set aside. In the interest of substantive justice the applicant is held to be entitled to disability element @ 30% for three years for 'Essential

Hypertension' w.e.f. his date of discharge i.e. 01.07.2001. However due to law of limitations he shall not be eligible for any arrears of disability element. He is already in receipt of service element since his discharge. The respondents are further directed to hold Re-survey Medical Board (RSMB) of the applicant within 03 months of this order. His further entitlement to disability element will be subject to the outcome of the RSMB. The whole exercise shall be completed within four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: March, 2019

gsr

(Justice S.V.S. Rathore)
Member (J)