

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 178 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-802122K Ex Sub Trilok Singh, S/O Sri Angad Singh,
R/O 571, Devlok Colony, Near Shiv Mandir, Distt-Hapur
(UP).

..... Applicant

Ld. Counsel for the : **Shri K.K. Mishra**, Advocate.
Applicant

Versus

1. Union of India, through its Secretary, Min of Defence,
New Delhi.
2. The Chief of Army Staff, South Block, New Delhi.
3. Officer-in-Charge, Army Education Corps, Records,
Pachmarhi.
4. PCDA (Pension), Allahabad.

.....Respondents

Ld. Counsel for the :**Shri Ashish Kumar Singh**,
Respondents. 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) To quash CDA (P) Allahabad, letter No G3/93/27/6.2000 dt 08 July 2000 and Government of India, Min of Defence, New Delhi letter No 7 (300) 2001-D(Pen. A&AC) dt 07 Sep 2001 (Annexure A-3 and A-5 respectively to O.A.).

(ii) Direct the respondents to grant 20% disability pension to the applicant duly rounded off to 50% as per the policy on the subject w.e.f. date of discharge from the service i.e. 31 Jan 2000.

(iii) Any other relief which Hon’ble Court may think just and proper may be granted in favour of the applicant.

(iv) Cost of the case may be allowed.

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, 08 months and 25 days. Since payment of pension involves recurring cause of action, as such, the delay was condoned vide order dated 28.02.2019.

3. The brief facts of the case are that the applicant was enrolled in the Indian Army on 05.11.1974 and was discharged from service with effect from 31.01.2000 in low medical category P2 (permt) for the disease ‘Ischameic Heart Disease (IHD). Release Medical Board (RMB) held on 24.08.1999 considered the disability IHD @ 20% for two

years as aggravated by military service. His claim for grant of disability pension was rejected by the PCDA (P), Allahabad vide order dated 08.07.2000 on the grounds that the disability is neither attributable to nor aggravated by military service (NANA) and constitutional in nature. Thereafter, the applicant preferred his appeal against the rejection of his claim but it was rejected vide order dated 07.09.2001. Feeling 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 was first detected to be suffering from IHD w.e.f. Apr 1981 i.e. after completion of more than six years of service. He further submitted that the applicant had to undergo frequent re-categorization medical boards and he was finally placed in low medical category P2 (permt) vide re-categorization medical board dated 17.10.1985 and he continued to service in low medical category till the date of discharge. The Ld. Counsel further submitted that since

his disability 'IHD' has been considered as aggravated by military service by the RMB, he 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 disability 'IHD' as aggravated by military service and assessed it @ 20% for two 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 K.K. Mishra, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents and perused the records. 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 disability 'IHD' 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. Hence we are of the opinion that in line with the recommendations of the RMB, the disability of the applicant, IHD @ 30% is to be considered as aggravated by military service.

9. Learned counsel for the applicant has 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. 01.02.2000 to 01.02.2002.

10. Thus in the result, the Original Application succeeds and is **Partly allowed**. The impugned orders dated 08.07.2000 and 07.09.2001 are set aside. In the interest of substantive justice the applicant is held entitled to disability element @ 20% for two years w.e.f. his date of discharge i.e. 01.02.2000. However, due to law of limitations, he shall not be entitled to any arrears on his disability element. He is already in receipt of service

element since his discharge. The respondents are also 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)