

**COURT NO 1**  
**RESERVED**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**ORIGINAL APPLICATION No. 586 of 2017**

Wednesday, this the 27<sup>th</sup> day of March, 2019

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

No. 14541635M Raj Kumar Chaturvedi, S/O Late MP  
Chaturvedi, R/O C-25, Kursi Road, Vikas Nagar, Lucknow, U.P.  
.....Applicant

Ld. Counsel for the : **Shri H.N. Tiwari**, Advocate.  
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence,  
New Delhi-110011.
2. Controller of Defence Account (Pension), Allahabad.
3. Colonel Records, EME Records, D.P. PEN-5,  
Secunderabad-21.
4. Officer-in-Charge, EME Records, Secunderabad-500021.

.....Respondents

Ld. Counsel for the : **Shri R.C. Shukla**,  
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) *The Hon’ble Tribunal may kindly be pleased to issue an order or direction quashing/setting aside the orders dated 25.08.2000 after summoning its original from the respondents and dated 14.10.2000 contained in Annexure No-1 to the O.A.*

(ii) *The Hon’ble Tribunal may kindly be pleased to issue an order or direction commanding upon the opposite parties to grant disability pension consequent upon the quashing/setting aside of aforesaid order and also to pay arrears thereof.*

(iii) *The Hon’ble Tribunal may kindly be pleased to issue any other order or direction deemed to be just and proper under the facts and circumstances of the case.*

(iv) *The Hon’ble Tribunal may kindly be pleased to direct the respondents to pay cost of the O.A.*

2. At the very outset it may be observed that the petition for grant of disability pension was preferred by the applicant with delay of 16 years, 03 months and 22 days. Since payment of pension involves recurring cause of action, as such, the delay was condoned vide order dated 27.11.2017.

3. The brief facts of the case are that the applicant was enrolled in the Indian Army on 12.03.1981 and was invalided out from service with effect from 31.12.1999 in low medical category CEE (Permt) for the disease ‘CHRONIC PANCRETITIS-577’. Invaliding Medical Board (IMB) held on 05.08.1999 considered the disability @ 30% for two years aggravated by military service. His claim for grant of disability pension was

rejected by the PCDA (P), Allahabad vide order dated 25.08.2000 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 25.07.2001. 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 'CHRONIC PANCRETITIS-577' w.e.f. 05.12.1996 while posted in field area, Manipur after completion of more than 15 years of service. The Ld. Counsel further submitted that since his disability 'CHRONIC PANCRETITIS-577' has been considered as aggravated by military service by the IMB, he should be granted disability pension as per recommendation of IMB.

5. Per contra, Ld. Counsel for the respondents submitted that though the IMB had opined applicant's disability 'CHRONIC PANCRETITIS-577' as aggravated by military service and assessed it @ 30% 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, constitutional in nature and not related to service vide MoD letter dated 22.11.1983 (Annexure R-4). As such his claim for disability pension has rightly been 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. Ld. Counsel for the respondents further submitted that the applicant had filed O.A. No 141/2001 in the Hon'ble Central Administrative Tribunal (CAT) for quashing of order dated 25.08.2000 and disposal of his appeal submitted against rejection of disability pension. The aforesaid O.A. was disposed off vide order dated 02.03.2001 with directions to the respondents to decide the appeal within two months from the date of communication of the order. The Ld. Counsel further submitted that the findings of medical board are recommendatory in nature and can be reviewed by the competent medical authorities i.e. MA (P)/Joint Director AFMS (Pensions) at the time of consideration of initial claim and appeal for grant of disability pension. As such, after careful examination in consultation with the Medical Advisor (Pension) i.e. MA (P) has overruled the opinion of the IMB. He pleaded the O.A. to be dismissed.

6. Heard Shri H.N. Tiwari, Ld. Counsel for the applicant and Shri R.C. Shukla, Ld. Counsel for the respondents and perused the records. We have also perused the IMB proceedings.

7. It is observed that in the instant case the PCDA (P) has overruled the opinion of the IMB and declared the disability 'CHRONIC PANCRETITIS-577' 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 IMB 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 IMB, the disability of the applicant, i.e. 'CHRONIC PANCRETITIS-577' is to be considered as aggravated by military service.

9. Learned counsel for the applicant has also made an oral prayer for rounding off of the disability pension. 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 decided on 10.12.2014, 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. 01.01.2000 to 31.12.2001.

10. Thus in the result, the Original Application succeeds and is **Partly allowed**. In the interest of substantive justice the applicant is held entitled to disability element @ 30% for two years w.e.f. his date of discharge i.e. 01.01.2000. However, due to law of limitations the applicant will not be entitled to any arrears of disability element. The applicant is already in receipt of service element since his date of discharge. The respondents are 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)**