

COURT NO 1
RESERVED

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

ORIGINAL APPLICATION No. 99 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)”

Nijaguni Parwata Math (No. JC 691367H Ex Nb Sub/Clk GD) son of Rudrayya Parwata Math, resident of Honnihal, Post Office-Bala Kundri BK, District-Belgaum-591103 (presently residing at House No 6B/393, Gopesh Kunj, Vrindavan Yojna No. 1, Raibareli Road, Telibagh, Lucknow).

..... Applicant

Ld. Counsel for the : **Shri Yash Pal Singh**, Advocate.
Applicant

Versus

1. Union of India through Secretary, Min of Defence, South Block, New Delhi.
2. Officer-in-Charge Records, Army Medical Corps Record Office, PIN-900450, C/O 56 APO
3. Principal Controller of Defence Accounts (Pension), Allahabad.

.....Respondents

Ld. Counsel for the
Respondents.

:**Shri R.C. Shukla**,
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) Issue/pass an order or direction setting aside the order/decision dated 02.09.1998 passed/issued by the Chief Controller of Defence Accounts (Pension), Allahabad as communicated by letter dated 09.09.1998, rejecting the claim of the applicant for disability pension (Annexure No 1 to the Original Application), after summoning the relevant original records.

(ii) Issue/pass an order directing the respondents to consider and grant disability pension to the applicant extending the benefit of rounding off from the date of discharge along with arrears and interest.

(iii) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(iv) Allow this Original Application with cost.

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 19 years and 23 days. Since payment of pension involves recurring cause of action, as such, the delay was condoned vide order dated 07.02.2019.

3. The brief facts of the case are that the applicant was enrolled in the Indian Army on 13.05.1980 and was discharged from service w.e.f. 31.08.1997 in low medical category. Release Medical Board (RMB) held on 24.06.1997 considered the disability (i) Neurotic Depression @ 20% for five years neither attributable to nor aggravated by military service (NANA) and (ii) Primary Hypertension @ 11-14% for five years aggravated by military service. His claim for grant of disability

pension was rejected vide order dated 02.09.1998 on the grounds that the disabilities are neither attributable to nor aggravated by military service. 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 the applicant was first detected to be suffering from the aforesaid disabilities w.e.f. 27.06.1996 i.e. after completion of more than sixteen 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 BEE (permt) for the disability 'Neurotic Depression' and was assessed @ 20% for five years as NANA and for disability 'Primary Hypertension' in category CEE (permt) assessing it @ 11-14% for five years aggravated by military service vide the RMB. The Ld. Counsel further submitted that since his second disability 'Primary Hypertension' has been considered as aggravated by military service by the RMB, however, PCDA (P) Allahabad has overruled the recommendation of the 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 the RMB.

5. Per contra, Ld. Counsel for the respondents submitted that the PCDA (P), Allahabad has rejected disability pension claim of the applicant on the ground that the disability 'Neurotic Depression' is neither attributable to nor aggravated by military service but the disability 'Primary Hypertension' though has been opined as aggravated by military service but the Medical Advisor (Pensions) attached to the PCDA (P) has overruled the opinion of the RMB and opined applicant's 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. The Ld. Counsel pleaded that since the applicant is not entitled to disability pension, this O.A. is not maintainable and should be dismissed.

6. Heard Shri Yash Pal Singh, Ld. Counsel for the applicant and Shri R.C. Shukla, 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

'Primary 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 the 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. Further, the applicant's disability 'Primary Hypertension' was assessed @ 11-14% for five years aggravated by military service. Since the applicant's services were cut short, he was not granted extension and he was removed on medical grounds by the RMB, his discharge will be deemed to be a case of

invalidation out in terms of Regulation 173-A of Pension Regulations for the Army, 1961 which reads as under:-

“173-A. Individuals who are placed in a lower medical category (other than ‘E’) permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative appointment are discharged before completion of their engagement, shall be deemed to have been invalidated from service for the purpose of the entitlement rules laid down in Appendix II to these Regulations.

***Note.** The above provision shall also apply to individuals who are placed in a low medical category while on extended service and are discharged on that account before the completion of the period of their extension”.*

9. Since it is a deemed case of invalidation, his disability of 11-14% for five years will be presumed to be 20% for five years and rounded off as 50% for five years in terms of Hon’ble Apex Court Judgment on rounding off of disability pension rendered in the case of **Sukhwinder Singh vs. Union of India & Ors** reported in (2014) STPL (WEB) 468 SC. In our view, the case is fully covered by the aforesaid decision of Hon’ble Apex Court in which the substance of what has been held is that even if an individual is assessed to be less than 20%, the *“disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”* Para 9 of the judgment, being relevant is quoted below.

“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any

*recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorizing the discharge or invalidating out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalidated out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. **Fifthly, as per the extant Rules/Regulations, a disability leading to invalidating out of service would attract the grant of fifty per cent disability pension.***”

10. 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 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 arrears beyond three years of filing this O.A.

11. Thus in the result, the Original Application succeeds and is **Partly allowed**. The impugned orders dated 02.09.1998 and 09.09.1998 are set aside. In the interest of substantive justice the applicant is held to be entitled to disability element @ 20% for five years w.e.f. his date of discharge i.e. 01.09.1997. However, due to law of limitations the applicant is not eligible for arrears of disability element. He is already in receipt of service element since his 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)