

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 18 of 2020**

Monday, this the 22nd day of March, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

JC-661645W Sub (Hony. Sub. Maj.) Pradip Kumar Tiwari (Retd.),
S/o Shri (Late) Brahm Dutt Tiwari, House No. 181, Prayag Narain
Kherha, Civil Lines, District Unnao (UP)-209801.

..... Applicant

Ld. Counsel for the: **Shri Shailendra Kumar Singh**, Advocate and
Applicant **Shri Ravi Kumar Yadav**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence,
New Delhi-110011.
2. The Chief of Army Staff, IHQ, Ministry of Defence (Army),
South Block, New Delhi-110011.
3. Integrated HQ of MoD (Army), Addl. Dte. of Gen. Of
MP/MP-8 (I to R), IHQ of MoD (Army), West Block-III, R.K.
Puram, New Delhi-110066.
4. OIC Records, ASC Records (South), Bangalore (KTK), Pin-
560007.
5. PCDA (Pensions), Draupadhi Ghat, Allahabad (UP)-
211014.

.....**Respondents**

Ld. Counsel for the : **Shri Amit Jaiswal**,
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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

- A. *to quash and set aside the Respondent No. 4 letter No. JC-661645/Appl/DP-III (Annexure A-1 of OA) and Respondent No. 4 & 5 letter dated 07 Apr 2006 and 10 Mar 2006 respectively (Annexure A-8 & 9 of OA).*
- B. *to issue/pass and order or directions of appropriate nature to the respondents to grant disability pension to the applicant from the date of his retirement from service (01.12.2005) along with rounding off benefit in terms of Govt of India letter dated 31 Jan 2001 and to pay the arrears accrued thereof with suitable rate of interest as deem fit by this Hon'ble Tribunal.*
- C. *Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Army (ASC) on 14.11.1977 and was discharged on 30.11.2005 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (i)(a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Ambala Cantt. on 12.07.2005 assessed his disability '**PRIMARY HYPERTENSION**' @ 30% for life and opined the disability to be aggravated by service. The applicant's claim for grant of disability pension was rejected by the Principal Controller of Defence Accounts (Pensions), Allahabad vide letter dated 10.03.2006 which communicated to the applicant vide letter dated 07.04.2006. The applicant preferred First Appeal which too was rejected vide letter dated 27.10.2015. The applicant preferred representations dated 04.07.2016 and 01.09.2017 to the

respondents but all in vain. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant submitted that the applicant's disability was found to be aggravated by military service vide RMB dated 12.07.2005 and has assessed the disability @ 30% for life. He further pleaded that at the time of enrolment, 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 enrolment in Army. The disease of the applicant was contacted during the service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. Ld. Counsel for the respondents conceded that disability of the applicant @30% for permanent has been regarded as aggravated by the RMB, but Principal Controller of Defence Accounts (Pensions), Allahabad has rejected the claim of the applicant on the ground that the disability of the applicant is neither attributable to nor aggravated by military service, hence applicant is not entitled to disability pension. He 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 the records. The questions which needs to be answered are of two fold :-

- (a) Whether the Principal Controller of Defence Accounts (Pensions), Allahabad has authority to overrule the opinion of RMB?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. This is a case where the disability of the applicant has been held as Aggravated by military service by the RMB which was held on 12.07.2005. The RMB assessed the disability @30% permanent. However, the opinion of the RMB held on 12.07.2005 has been overruled by Principal Controller of Defence Accounts (Pensions), Allahabad and the disability has been regarded as neither attributable to or aggravated (NANA) by military service being constitutional in nature and not related to 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 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*** in Civil Appeal No 164 of 1993, decided on 14.01.1993,

we are of the considered opinion that the decision of competent authority i.e. Principal Controller of Defence Accounts (Pensions), Allahabad over ruling the opinion of RMB held on 12.07.2005 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) it is clear that the disability assessed by RMB on 12.07.2005 cannot be reduced/overruled by Principal Controller of Defence Accounts (Pension), Allahabad and hence the decision of Principal Controller of Defence Accounts (Pensions), Allahabad is void. Hence, we are of the opinion that the disability of the applicant should be considered as aggravated by military service as has been opined by the RMB dated 12.07.2005.

9. 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 10th 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."*

10. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

11. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off of disability element @ 30% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

12. In view of the above, the Original Application No. 18 of 2020 deserves to be allowed, hence **allowed**. The impugned orders dated 04.09.2017, 07.04.2006 and 10.03.2006, annexed as Annexure No. A-1, A-8 and A-9 of Original Application, are set aside. The disability of the applicant is held as aggravated by Military Service as has been opined by RMB dated 12.07.2005. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% from w.e.f. three years preceding the date of filing this Original Application. The date of filing this Original Application is 27.12.2019. The respondents are 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 actual payment.

13. No order as to costs..

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 22nd March, 2021

AKD/-