

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 1045 of 2022**Thursday, this the 16th day of March, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Maj. Gen. Sanjay Singh, Member (A)”**

IC – 47906W Col. Arun C. Karadi (Retd.Z0, S/o Late Dr. CH Karadi, Residing at H. No. 22B, Deendayal Upadhyay Nagar, Sarsawa, PO – Arjunganj, District – Lucknow, PIN-226002.

..... Applicant

Ld. Counsel for the : **Shri Mahendra Kumar Singh**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Govt. of India, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MoD (Army), DHQ PO, New Delhi-110011.
3. Addl. Dte. Gen. of Manpower (Policy & Planning), ORO/MP-6, Adjutant General’s Branch, IHQ of MoD (Army), West Block-III, RK Puram, New Delhi-110066.
4. Addl. Dte. Gen. of Personnel Services (PS-4), Adjutant General’s Branch, IHQ of MoD (Army), 5th Floor, ‘A’ Block, Room No. 527, Defence Offices Complex, KG Marg, New Delhi-110001.
5. O/o the PCDA (Pensions) (Army) (Commissioned Officers Pension), Draupadi Ghat, Allahabad (UP)-211014.

.....Respondents

Ld. Counsel for the : **Ms. Prerna Singh**, Advocate
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 or set aside the Respondents letter dated 13 Oct 2022, 21 Feb 2022 and 29 Oct 2021 wherein applicant’s claim for the grant of Disability element was not approved.*
- (B) *To direct the respondents to grant Disability Element to the applicant from the date his retirement from service i.e. 01 Feb 2021 and to pay the arrears along with rounding off benefit from 60% for life to 75% for life in terms of Government of India letter dated 31 Jan 2001 with suitable rate of interest as deemed fit and proper 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 commissioned in the Indian Army on 11.06.1988 and retired from service on 31.01.2020 in Low Medical Category. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Secunderabad on 24.08.2020 assessed his disabilities (i) **‘DYSLIPIDEMIA (E-78.5)’ @05%** for life as neither attributable to nor aggravated (NANA) by service, (ii) **‘PRIMARY HYPETENSION (I-10)’ @30%** for life as neither attributable to nor aggravated (NANA) by service, (iii) **‘NOISE INDUCED HEARING**

LOSS (B/E) @30% for life as aggravated by service and (iv) **'DIABETES MELLITUS TYPE-II (E-11.0) @20%** for life as aggravated by service, **composite disabilities @60% for life.**

The disability claim of the applicant was however not approved by the competent authority vide letter dated 29.10.2021 on the ground that disabilities do not fulfil the eligibility condition as laid down in existing provision for the grant of disability element. The applicant preferred First Appeal which too was rejected vide letter dated 21.02.2022. The applicant also preferred Second Appeal which too was rejected vide letter dated 13.10.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant submitted that at the time of commissioning, 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 commissioning in Army. The diseases of the applicant were contracted during the service, hence all the diseases are attributable to and aggravated by Military Service. He further submitted that applicant's third and fourth disabilities have been regarded as aggravated by service by the RMB. He further pleaded that Competent Authority has no authority to overrule the opinion of the RMB. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to 75%.

4. Ld. Counsel for the respondents conceded that third and fourth disabilities of the applicant have been regarded as **aggravated by** the RMB, but the Competent Authority has not approved the claim of the applicant on the ground that all the disabilities of the applicant are neither attributable to nor aggravated by military service, hence applicant is not entitled to disability element of 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 records and we find that the questions which need to be answered are of three folds:-

- (a) Whether the Competent Authority has authority to overrule the opinion of RMB?
- (b) Whether the first and second disabilities i.e. **'DYSLIPIDEMIA'** and **'PRIMARY HYPERTENSION'** of the applicant are also attributable to or aggravated by Military Service?
- (c) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. This is a case where the third and fourth disabilities of the applicant have been held as aggravated by military service by the RMB. The RMB assessed the third disability @30% for life and

fourth disability @20% for life. However, the opinion of the RMB has been overruled by Competent Authority and the said disabilities have also been regarded as neither attributable to or aggravated by military 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 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, 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**, we are of the considered opinion that the decision of competent authority over ruling the opinion of RMB held on 24.08.2020 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) as well as IHQ of MoD (Army) letter dated 25.04.2011 it is clear that the disability assessed by RMB cannot be reduced/overruled by Competent Authority, hence the decision of Competent Authority is void. Hence, we are of the opinion that the third and fourth disabilities of the applicant should be considered as aggravated by military service as has been opined by the RMB.

9. Further, the law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

10. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the second disability '**PRIMARY HYPERTENSION (I-10)**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of said disability in May, 2010 while posted

in Peace location (Mamun Cantt.), therefore, applicant is not entitled to disability element of disability pension for these disabilities. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability element of disability pension to applicant for this disability are not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was commissioned in Indian Army on 11.06.1988 and the first and second disabilities have started after more than 21 years of Army service i.e. in May, 2010. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of *Dharamvir Singh vs Union of India & Ors* (supra), and the second disability i.e. '**PRIMARY HYPERTENSION (i-10)**' of the applicant should also be considered as aggravated by military service.

11. However, with regard to first disability i.e. '**DYSLIPIDEMIA (E-78.5)**' we are agree with the opinion of the RMB that it is NANA as it is a metabolic disease with hereditary predisposition, relative deficiency of enzymes and excess intake of saturated fat in diet.

12. In para 17 A (a) of Chapter VII of the Guide to Medical Officer (Military Pensions), 2002 the provision for composite assessment has been mentioned which reads as under :-

“17A. Composite Assessment

(a) Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment will be the arithmetical sum of their separate assessment. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping. There is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases. This is not correct.”

13. In the instant case there are functional effects of the second, third and fourth disabilities overlapping, as such composite assessment is to be reduced in proportion to the degree of overlapping. The degree of second disability is @30%, third disability is @30% and fourth disability is @20% for life, as the first disability is @5% for life and RMB has opined composite disabilities @60% for life, we hold that composite assessment of second, third and fourth disabilities is @55% for life.

14. 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 invalided 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.”

15. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed

Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

16. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Union of India and Ors vs Ram Avtar & ors (supra)*** as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @55% for life to be rounded off to 75% for life may be extended to the applicant from the next date of his retirement.

17. In view of the above, the **Original Application No. 1045 of 2022** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The second, third and fourth disabilities of the applicant are held as aggravated by Army Service. The applicant is entitled to get disability element @55% for life which would be rounded off to 75% for life from the next date of his retirement. The respondents are directed to grant disability element to the applicant @55% for life which would stand rounded off to 75% for life from the next date of his retirement. The respondents are further 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 the actual payment.

18. No order as to costs.

(Maj. Gen. Sanjay Singh)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 16 March, 2023

AKD/-