

Court No. 1

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

ORIGINAL APPLICATION No. 54 of 2022

Tuesday, this the 17th day of May, 2022

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

Ex Nk Inam Singh (No. 2983395L Ex Nk), Son of Sri Hari Kishore Singh, R/o Kotwali Ki Parchai, Yadav Nagar, Dakshini Fardkhana, PO- Kurawali, District- Mainpuri (U.P.) PIN-205265.

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, Delhi – 110011.
2. The Officer Incharge Records Rajput Regiment, PIN-900427, C/o 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj.

.....Respondents

Ld. Counsel for the Respondents. : **Mrs Deepti Prasad Bajpai,
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 :-

(i) This Hon’ble Court may graciously be pleased to direct the respondents refer the case of applicant for resurvey medical board and to give disability pension (element) along with its arrears and interest to the applicant wef 13.11.2002 towards his disability ‘CSOM (LT)’ for life, (Aggravated & Attributable by Military Service).

(ii) This Hon’ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.

(iii) Award costs to the applicant.

2. Briefly stated, applicant was initially enrolled in the Indian Army on 17.01.1984 and was discharged on 01.03.2001 on in Low Medical Category under Rule 13 (3) Item III (v) of the Army Rules, 1954. At the time of discharge, the Release Medical Board (RMB) held at Military Hospital, Bareilly on 14.11.2000 assessed his disability “**CSOM (LT)**” @ 20% for two years and opined the disability to be Aggravated by military service. The disability of the applicant was re-assessed by the medical

adviser (Pension), Allahabad attached to their office at less than 20% (11-14%) and disability claim of the applicant was rejected by the Principal Controller of Defence Account (Pensions), Allahabad vide letter dated 17.08.2001 on the ground that the disability percentage of the applicant was less than 20%. Applicant preferred representation for grant of disability element which was also rejected. It is in this perspective that the applicant has preferred the present Original Application for grant of disability element for two years.

3. Ld. Counsel for the applicant submitted that the applicant's disability was found to be attributable to military service vide RMB which had assessed the disability @20% for two years. 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 contracted during the service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, learned Counsel for the respondents submitted that applicant was discharged from service on 01.03.2001 under the provisions of Army Rule 13 (3) item III (V) read in conjunction with Army Rule 13 (2A) being in low medical category 'CEE' (Permanent) due to non availability of suitable sheltered appointment in the unit and he was unwilling to serve. He was granted service pension vide PPO dated 24.02.2001 which was further revised from time to time. RMB assessed the Disability of the applicant @ 20% for two years from 27.03.2000 to 27.03.2002 and regarded as aggravated by military service, but Medical Advisor at Principal Controller of Defence Accounts (Pensions), Allahabad office reduced disability percentage less than 20%, 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 records and we find that the questions which need to be answered are of two folds:-

- (a) Whether the Medical Advisor at 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 was assessed by RMB @ 20% for two years and held as aggravated by military service. However, the opinion of the RMB was overruled by Medical Advisor, Principal Controller of Defence Accounts (Pensions), Allahabad and the disability was reduced to less than 20% for two years.

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 i.e. Medical Advisor, Principal Controller of Defence Accounts (Pensions), Allahabad overruling the opinion of RMB held on 27.01.1999 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 Medical Advisor, Principal Controller of Defence Accounts (Pension), Allahabad, hence the decision of Medical Advisor, Principal Controller of Defence Accounts (Pensions), Allahabad is void. Medical Board is a duly constituted body and findings of the Medical Board should be given due credence. Hence, we are of the opinion that the disability of the applicant should be considered @ 20% for two years as has been opined by the RMB.

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. In the instant case, after two years, the applicant was further brought before Review Medical Board at Military Hospital Agra for reassessment of his disability wherein disability of the applicant was assessed @ less than 20% (11-14%) for life vide Review Medical Board dated 28.10.2002. Further his claim was processed for adjudication which was rejected by PCDA, Allahabad vide letter dated 10.01.2003 being less than 20%. Regulation 53 (a) of Pension Regulations for the Army, 2008 (Part-1), makes it abundantly clear that an individual being assessed disability below 20% is not entitled to disability element irrespective of disability being attributable to or aggravated by the military service. The Hon'ble Supreme Court in **Civil Appeal No 10870 of 2018 Union of India & Ors vs**

Wing Commander SP Rathore, has made it clear vide order dated 11.12.2019 that disability element is inadmissible when disability percentage is below 20%. Para 9 of the aforesaid judgment being relevant is quoted as under:-

“9. As pointed out above, both Regulation 37 (a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off.”

11. Since, Resurvey Medical Board assessed the disability of the applicant @ 11-14% for life hence, no further Re-Survey Medical Board of the applicant can be conducted.

12. As far as disability element assessed by RMB @ 20% for two years and found as aggravated by military service is concerned, the applicant is entitled disability element for two years and Medical Advisor at PCDA (P) Allahabad has no power to reduce disability of the applicant.

13. In the result, the O.A. is **partly allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element for two years, are set aside. The disability of the

applicant is considered @ 20% for two years as opined by RMB. The respondents are directed to grant disability element to the applicant @ 20% for two years which would stand rounded off to 50% for two years from the next date of his discharge. In Review Medical Board, disability of the applicant was assessed less than 20% for life, hence neither further Review Medical Board is required to be done nor is the applicant entitled for disability element being less than 20%. 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.

14. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated : 17 May, 2022

Ukt/-