

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 78 of 2022**Friday, this the 20th day of May, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 14457316P Ex. Hav. Jai Prakash Singh, S/o Late Surya Bansh Singh, R/o Village – Jarar Manik, PO – Bhalauni, District – Deoria (U.P.)-274182.

..... **Applicant**Ld. Counsel for the : **Shri D.S. Tiwari**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Sena Bhawan, New Delhi, PIN-110106.
3. The Record Officer, Artillery Records-908802, C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

.....**Respondents**Ld. Counsel for the : **Shri Ram Saran Awasthi**, 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:-

- (I) *The Hon'ble Tribunal may be pleased to set aside the rejection orders dated 25.01.1996 and Appeal rejection order dated 30.04.1998 and 08.01.2019 (communicated vide letter dated 14.09.2019) after summoning the same along with Medical Board Proceedings.*
- (II) *The Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from the date of discharge i.e. 31.04.1995 along with Broad Banding to 50% and its arrears thereon at the rate of 18% per annum.*
- (III) *Any other appropriate order or direction be passed which this Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.*
- (IV) *Cost of the application.*

2. Briefly stated, applicant was enrolled in the Regiment of Artillery of Indian Army on 07.10.1978 and was discharged on 31.03.1995 (AN) being placed in medical lower than AYE and not up to prescribed military standard under Rule 13(3) Item III (iv) of the Army Rule, 1954. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Allahabad on 02.01.1995 assessed his disability '**OTO SCLEROSIS (BIL) (387) V-67**' @ 40% for two years as **aggravated by military service** due to loud sound during his service as gunner being exposed. The applicant's claim for grant of disability element of disability pension was rejected by the Principal Controller of Defence Accounts (Pension), Allahabad vide letter dated 25.01.1996 on the ground that the disability from which the

applicant was suffered while rendering his service in the Army and on which his claim is based is neither attributable to nor aggravated by military service which was communicated to the vide letter dated 16.02.1996. The applicant preferred First Appeal which too was rejected vide letter dated 30.04.1998 which was communicated to the applicant vide letter dated 30.06.1998. The applicant preferred representation through Zila Sainik Board, Deoria which was rejected vide letter dated 08.01.2019. 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 attributable to military service vide RMB which had also assessed the disability @40% 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 further submitted that Principal Controller of Defence Accounts (Pension), Allahabad has no authority to overrule the opinion of 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 as well as its rounding off to 50%.

4. Ld. Counsel for the respondents conceded that disability of the applicant @40% for two years has been regarded as

aggravated by the RMB, but pension sanctioning authority i.e. 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 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 two folds:-

- (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. The RMB assessed the disability @40% for two years. However, the opinion of the RMB has been overruled by Principal Controller of Defence Accounts (Pensions), Allahabad and the disability has 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 i.e. Principal Controller of Defence Accounts (Pensions), Allahabad over ruling 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 Principal Controller of Defence Accounts (Pension), Allahabad, 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.

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 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."

10. 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.

11. 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 and policy for rounding off is applicable with effect from 01.01.1996, we are of the considered view that applicant is entitled for disability element of disability pension @40% from the next date of discharge i.e. from 01.04.1995 to 31.12.1995 and for the benefit of rounding off of disability element of disability pension from @40% to @50% for the remaining period of two years i.e. 01.01.1996 to 31.03.1997.

12. Since the applicant's RMB was valid for two years w.e.f. 31.03.1995, hence, the respondents will now have to conduct a fresh Re-Survey Medical Board for him to decide his future eligibility to disability element of disability pension.

13. In view of the above, the **Original Application No. 78 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 disability of the applicant is held as aggravated by Military Service as has been opined by RMB. The applicant is held entitled for disability element of disability pension @40% from the next date of discharge i.e. from 01.04.1995 to 31.12.1995 and for the benefit of rounding off of disability element of disability pension from @40% to @50% for the remaining period of two years i.e. 01.01.1996 to 31.03.1997.

Respondents are directed to grant disability element of disability pension @40% from the next date of discharge i.e. from 01.04.1995 to 31.12.1995 and grant the benefit of rounding off of disability element of disability pension from @40% to @50% for the remaining period of two years i.e. 01.01.1996 to 31.03.1997. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element of disability pension. 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.

16. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 20 May, 2022

AKD/-