

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 957 of 2022**Wednesday, this the 24th day of May, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

01558R Cdr. Satya Pal Sharma, Retd., son of Late Major K.J. Sharma, Resident of House No. E-43, Jalvayu Vihar, Sector XXI, Noida, Uttar Pradesh-201301.

..... Applicant

Ld. Counsel for the Applicant : **Shri Aditya Singh Puar**, Advocate
Shri Ali Nawas Khan, Advocate
Shri Madhukar Tomar, Advocate
 Versus

1. Union of India, through Secretary to Govt. of India, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of Naval Staff, Integrated Headquarters of MoD (Navy), DHQ PO, New Delhi.
3. Logistics Officer in Charge, Naval Pension Office, INS Tanaji, Sion, Trombay road, Mankhurd, Mumbai-400088.
4. Principal Controller of Defence Accounts (N), No. 1 Cooperage Road, Mumbai-400001.

.....Respondents

Ld. Counsel for the Respondents. : **Ms. Anju Singh**, Advocate
 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) *Limited Prayer for direction to the respondents to process the case for grant of disability pension to the applicant in terms of their own recent policies and law declared by Constitutional Courts and consequently release the disability pension w.e.f. Applicant's date of release from service @20% disability (rounding off to 50%) for life, with costs and interest as per the declaration of the Applicant's disability being 'aggravated by military service' by the duly constituted Release Medical Board (Annexure A-1) since the applicant's disability which was declared 'attributable/aggravated' by the Release Medical Board has been unilaterally and arbitrarily rejected by the finance/administrative authorities of the Union of India vide Impugned Orders I, II and III.*
- (ii) *With a further prayer that in case of contest of the Prayer of the Applicant, heavy costs, interest and compensation may kindly be directed to be paid to the Applicant to be recovered from the authority who may have failed to process the case of the Applicant in accordance with law and with a further prayer for ignoring/setting aside of the reasons mentioned in the impugned orders (Impugned Orders I, II & III) rejecting the claim of disability pension being in contravention of law laid down by Hon'ble Courts, or any other direction or order that the Hon'ble Tribunal may deem fit in the facts and circumstances of the case.*
- (iii) *Any other Order/direction(s) this Learned Tribunal may deem fit.*

2. Briefly stated, applicant was commissioned in the Indian Navy in June, 1974 and prematurely retired on 30.04.2001 (AN) at his own request in Low Medical Category. At the time of retirement from service, the Release Medical Board (RMB) held at Delhi on 28.03.2001 assessed his disabilities '**PRIMARY HYPERTENSION**' @20% for five years as **aggravated by Naval service** and (ii) '**OBESITY**' @1-5% for five years as neither attributable to nor aggravated by Naval service (NANA), **composite disabilities 20%**. The disability claim of the applicant was however rejected by the

competent authority vide letter dated 24.12.2019 on the ground that causal connection between disabilities and Naval service are not established. The applicant preferred First Appeal which too was rejected vide letter dated 18.12.2020. The applicant preferred Second Appeal which too was rejected vide letter dated 23.03.2022. 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 first disability was found to be aggravated by Naval service vide RMB which had also assessed the disability @20% for five years and second disability was found to be NANA @1-5% for five years. He further submitted that Competent Authority 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 and its rounding off to 50%.

4. Ld. Counsel for the respondents conceded that first disability of the applicant @20% for five years has been regarded as **aggravated by** the RMB, but pension sanctioning authority i.e. Competent Authority has rejected the claim of the applicant on the ground that causal connection between disability and Naval service is not established and the applicant was retired at his own request, hence as per Regulations 28 and 30 of the Navy Pension Regulations, 1964 the applicant is not entitled to disability element

of disability pension. However, Ministry of Defence vide letter No.16(5)/2008/D(Pension/Policy) dated 19.05.2017 provided that the President is pleased to decide that all pre-2006 Armed Forces Personnel who were retained in service despite disability and retired voluntarily or otherwise will be allowed disability element/war injury element in addition to retiring/service pension or retiring/service gratuity, subject to the condition that their disability was accepted as attributable to or aggravated by military service and had foregone lump sum compensation in lieu of that disability. Further, concerned Armed Forces Personnel should still be suffering from the same disability which should be assessed at 20% or more on the date of effect of the ibid letter. She 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 with regard to first disability?
- (b) Whether the applicant is entitled to disability element of disability pension being a case of retired at his own request?

(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 first disability of the applicant has been held as aggravated by Naval service by the RMB. The RMB assessed the first disability @20% for five years. However, the opinion of the RMB has been overruled by competent authority on the ground that causal connection between disabilities and Naval service are not established and the applicant was retired at his own request.

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 28.03.2001 with regard to first disability 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 first disability of the applicant should be considered as aggravated by Naval service as has been opined by the RMB.

9. With regard to second disability i.e. '**OBESITY**' we are agree with the opinion of the RMB as NANA as it is life style disease and constitutional in nature.

10. Government of India, Ministry of Defence letter No. 16(5)/2008/D(Pen/Policy) dated 29.09.2009 stipulates that *“In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report,*

President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntarily or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity.” In view of aforesaid letter, the applicant is entitled for grant of disability element of disability pension even if he has been retired on his own request on compassionate grounds.

11. 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."*

12. 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.

13. 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 @ 20% for five years to be rounded off to 50% for five years may be extended to the applicant from the next date of his retirement.

14. Since the applicant's RMB was valid for five years w.e.f. 01.06.2006, 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.

15. In view of the above, the **Original Application No. 957 of 2022** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension with regard to first disability, are set aside. The first disability of the applicant is held as aggravated by Naval Service as has been opined by RMB. The applicant is entitled to get disability element @20% for five years which would be rounded off to 50% for five years from the next date of his retirement. The respondents are directed to grant disability element to the applicant @20% for five

years which would stand rounded off to 50% for five years from the next date of his retirement. 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 Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 24 May, 2023

AKD/-