

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 1392 of 2023**Thursday, this the 09<sup>th</sup> day of May, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

No. 4063921N Naik (TS) Badar Singh (Retd.), S/o Late Shri Manwar Singh, R/o Village – Haripur, Post Office- Selaqui, District – Dehradun, Pin – 248011 (Uttarakhand).

**..... Applicant**

Ld. Counsel for the : **Shri Raj Kumar Mishra**, Advocate  
Applicant **Ms. Upasna Mishra**, Advocate  
**Lt. Col. Nidhikant Dhyani (Retd)**, Advocate

Versus

1. The Union of India, through Secretary, Ministry of Defence, South Block, New Delhi -110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi -110011.
3. The Additional Directorate General Personnel Services /PS-4, AH's Branch, IHQ of MoD (Army), Territorial Army, IHQ of MoD (Army), Defence Office Complex, 5<sup>th</sup> Floor, 'A' Block, K.G. Marg, New Delhi- 110001.
4. The Records Office, The Garhal Rifles Regiment Center, Landowne – PIN-246155 (Uttarakhand).

**.....Respondents**

Ld. Counsel for the : **Shri G.S. Sikarwar**, Advocate  
Respondents. Central Govt. Standing Counsel

## ORDER

**“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”**

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

- 8.1 *To issue order and directions to grant of benefits of disability element to the applicant from 01 Sep 1998 onwards for the permanent disability “ AMOEBIC LIVER ABSCESS ACUTE CHOLESYSTITIS (OPTD) S72” conceded as attributable to military service while and caused due to infection contacted while in service.*
- 8.2 *To quash the impugned order bearing No. 4063921/DP dated 25 July 2023 vide which the disability pension claim of the applicant has been rejected.*
- 8.3 *Issue an order or direction to the release the arrears and consequential benefits arisen out of disability pension /element to the applicant with 18% simple interests with effect from 01 Sep 1998.*
- 8.4 *Any other relief which the Hon’ble Court may deem fit and proper in the circumstances of the case.*
- 8.5 *To award the cost of this petition to the applicant.*

2. Briefly stated, applicant was initially enrolled in the Garhwal Rifles of Indian Army 14.08.1981 and discharged on 31.08.1998 (AN) on completion of terms of engagement in Low Medical Category under Rule 13 (3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at 159 General Hospital on 10.02.1998 assessed his disabilities (i) ‘**AMOEBIC LIVER ABSCESS**’ @20% for two years as **attributable to military service** and (ii) ‘**CHOLESYSTITIS (OPTD) S72**’ @20% for two years as neither attributable to nor aggravated by military service, **composite disabilities @40% for**

**two years.** The applicant was granted disability pension @20% for two years with effect from 01.09.1998 to 09.02.2000 vide PPO No.DE/010739/99 dated 21.05.1999. The applicant's Re-Survey Medical Board (RSMB) conducted at Military Hospital, Dehradun on 05.10.1999 assessed the applicant's disability @20% for five years with effect from 10.02.2000 to 09.02.2005. The claim of the applicant was however rejected by the Chief Controller of Defence Account (Pensions), Allahabad vide letter dated 27.06.2000 on the ground that the disability of the applicant was re-assessed @11 - 14% for five years i.e. from 10.02.2000 to 09.02.2005 which was communicated to the applicant vide letter dated 18.07.2000. The applicant served Legal Notice dated 17.07.2023 but of no avail. The applicant also sent representation cum Legal Notice dated 27.08.2023 but of no avail. 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 attributable to military service vide RMB which had also assessed the disability @20% for two years. Accordingly, the applicant was granted disability pension for two years. He further pleaded that RSMB held on 05.10.1999 assessed the applicant first disability @20% for five years i.e. from 10.02.2000 to 09.02.2005 but Chief Controller of Defence Accounts (Pension), Allahabad has reduced the degree of first disability from 20% to 14-19% for five years. He further submitted that Chief Controller of Defence Accounts (Pension), Allahabad has no

authority to overrule the opinion of RMB by reducing the percentage of disability. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension and its rounding off to 50%.

4. Ld. Counsel for the respondents conceded that the first disability of the applicant @20% for two years has been regarded as **attributable to military service by** the RMB. Accordingly, the applicant was granted disability pension for two years. He further submitted that the RSMB held on 05.10.1999 assessed the applicant's first disability @20% for five years from 10.02.2000 to 09.02.2005, but pension sanctioning authority i.e. Chief Controller of Defence Accounts (Pensions), Allahabad has rejected the claim of the applicant on the ground that the applicant's first disability is 11-14%, hence applicant is not entitled to disability element of disability pension. He further pleaded that on 07.07.2004 documents for conducting Re-Survey Medical Board (RSMB) were forwarded to Military Hospital, Dehradun vide Records Garhwal Rifles letter No. 4063921/20/RSMB dated 07.07.2004 for further assessment of applicant's disability and advised the applicant to report to concerned Military Hospital. Military Hospital, Dehradun vide their letter No. 3307/-5/MB dated 24.07.2004 has intimated the applicant to report to Military Hospital before 24.09.2004. However, the applicant did not report to Military Hospital for RSMB as intimated vide Military Hospital, Dehradun letter No. 3309/M-5 (MB)

dated 25.01.2006. The fact and consequences of the same were briefed to applicant vide Records Garhwal Rifles letter No.4063921/RSMb dated 11.02.2006. However, applicant did not submit any query and representation for the same. As such the applicant is not entitled for conducting the RSMB. 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 three folds:-

- (a) Whether the Chief Controller of Defence Accounts (Pensions), Allahabad has authority to overrule the opinion of RSMB held on 05.10.1999?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?
- (c) Whether the applicant is entitled for conducting RSMB?

6. This is a case where the disability of the applicant has been held as aggravated by military service by the RMB. The RSMB held on 05.10.1999 assessed the applicant's first disability @20% for five years. However, the opinion of the RMB has been overruled by Chief Controller of Defence Accounts (Pensions), Allahabad and percentage of first disability has been reduced to 11-14% for five years.

7. The issue of sanctity of the opinion of a Release Medical Board/RSMB 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. Chief Controller of Defence Accounts (Pensions), Allahabad over ruling the opinion of RSMB held on 05.10.1999 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 RSMB cannot be reduced/overruled by Chief Controller of Defence Accounts (Pension), Allahabad, hence the decision of Chief Controller of Defence Accounts (Pensions), Allahabad is void. Hence, we are of the opinion that the percentage of first disability of the applicant should be considered @20% for five 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 10<sup>th</sup> 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/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/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 life may be extended to the applicant from 10.02.2000 to 09.02.2005.

12. Although the applicant's RSMB held on 05.10.1999 was valid for the period of five years i.e. from 10.02.2000 to 09.02.2005 but considering that documents for conducting Re-Survey Medical Board (RSMB) were forwarded on 07.07.2004 to Military Hospital, Dehradun for further assessment of applicant's disability and advised the applicant to report to concerned Military Hospital and Military Hospital, Dehradun vide their letter dated 24.07.2004 has intimated the applicant to report to Military Hospital before 24.09.2004 but the applicant did not report to Military Hospital we are of the opinion that after a lapse of more than 25 years from the date of discharge and 18 years from the date of expiry of RSMB it will not be appropriate to direct the respondents to conduct Re-Survey Medical Board (RSMB) to assess his disabilities. Even otherwise, the question of entitlement of applicant to disability element of disability pension cannot be determined on the basis of medical examination conducted 25 years after his discharge.

13. In view of the above, the **Original Application No. 1392 of 2023** deserves to be partly allowed, hence **partly allowed**. The impugned order, rejecting the applicant's claim for grant of

disability element of disability pension, is set aside. The degree of first disability of the applicant is held @20% for five years as has been opined by RSMB. The applicant is entitled to get disability element @20% for five years which would be rounded off to 50% for five years from 10.02.2000 to 09.02.2005. 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 10.02.2000 to 09.02.2005. The applicant is not entitled for conducting the RSMB. 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.

**(Lt. Gen. Anil Puri)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated : 09 May, 2024

AKD/-