

Reserved

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 1209 of 2023

Thursday, this the 28th day of November, 2024

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Lt. Gen. Anil Puri, Member (A)

Ser. No. 14245142-K Ex. L/Nk. Chandra Bhan Singh, presently residing at H. No. @ 158/2, JK Colony, Jaijmau Colony, District – Kanpur Nagar, Uttar Pradesh, PIN-208010.

.... Applicant

Ld. Counsel for the : **Shri Keshav Sharma**, Advocate
Applicant **Shri Pradeep Kumar Mishra**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of MoD (Army), DHQ, New Delhi-11.
3. The Officer-In-Charge, Signal Records, PIN-908770, C/o 56 APO.
4. The PCDA (Pension), Draupadi Ghat, UP-14.

... Respondents

Ld. Counsel for the: **Ms. Anju Singh**, Advocate
Respondents. Central Govt. Standing Counsel.

ORDER

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

- (a) *Quash the Impugned order issued by Signal Records vide P/14245142/RSMB/NER dated 27 Nov 2003 The Hon'ble Tribunal may be pleased to set aside the re-assessment of temporary disability pension order dated 27 Nov 2003 (Annexure No. A-1).*
- (b) *The Hon'ble Tribunal may be pleased to direct the respondents to grant disability element with effect from 18 Apr 2004 along with its arrears and interest thereon at the rate of 18% per annum.*
- (c) *To issue/pass any other orders/direction as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case in favour of the applicant and render justice.*

2. Briefly stated, applicant was enrolled in the Corps of Signals of Indian Army on 14.05.1982 and invalided out from service on 28.02.1993 in Low Medical Category due to unwilling to continue in service after rendering 10 years and 291 days of service under Rule 13 (3) Item III (v) read in conjunction with Rule 13(2A) of the Army Rules, 1954. Before invalided out from service, the Invaliding Medical Board (RMB) held at Military Hospital Bareilly on 23.11.1992 assessed his disability '**BRONCHIAL ASTHMA**' @60% for two years as **aggravated by** military service. However, the Pension Sanctioning authority i.e. Principal Controller of Defence Accounts (Pension) accepted the disability pension claim

of the applicant and notified Disability Element for the disability @20% for five years from 01.03.1993 to 22.11.1997 vide PPO No. D/001688/93 dated 30.06.1993. The Re-Survey Medical Board (RSMB) held at Base Hospital, Lucknow on 12.09.1997 re-assessed the applicant's @20% for five years with effect from 23.11.1997. However, Principal Controller of Defence Accounts (Pension), Prayagraj granted disability pension to the applicant from 23.11.1997 to 11.09.1999. Further, the RSMB held at Base Hospital, Lucknow on 19.04.1999 re-assessed the applicant's disability @20% with effect from 11.04.1999 to 11.09.1999 and @20% with effect from 12.09.1999 for five years. However, the Principal Controller of Defence Accounts (Pension), Prayagraj accepted/reduced the applicant's disability @11-14% from 12.09.1999 to 18.04.2004 and stopped the applicant's disability element vide PCDA (P), Prayagraj letter dated 13.10.1999 which was communicated to the applicant vide letter dated 11.11.1999. The RSMB held at Base Hospital, Lucknow on 21.06.2003 re-assessed the applicant's disability @11-14% for life. Accordingly, the applicant's claim for the grant of disability pension was stopped being less than 20% vide letter dated 27.11.2003. The applicant preferred CPGRAM Grievance dated 29.07.2022 which too was rejected vide letter dated 22.09.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant submitted that disability of the applicant has been regarded as **aggravated by** military service and the applicant's disability assessed @60% for two years. However, the Pension Sanctioning authority i.e. Principal Controller of Defence Accounts (Pension) accepted the disability pension claim of the applicant and notified Disability Element for the disability @20% for five years from 01.03.1993 to 22.11.1997. The Re-Survey Medical Board (RSMB) held at Base Hospital, Lucknow on 12.09.1997 re-assessed the applicant's @20% for five years with effect from 23.11.1997, however, Principal Controller of Defence Accounts (Pension), Prayagraj granted disability pension to the applicant from 23.11.1997 to 11.09.1999. Further, the RSMB held at Base Hospital, Lucknow on 19.04.1999 re-assessed the applicant's disability @20% with effect from 11.04.1999 to 11.09.1999 and @20% with effect from 12.09.1999 for five years, but, the Principal Controller of Defence Accounts (Pension), Prayagraj, without having any authority to reduce/overrule the opinion of the RSMB held on 19.04.1999, reduced the applicant's disability @11-14% from 12.09.1999 to 18.04.2004 and stopped the applicant's disability element. He further submitted that the RSMB held at Base Hospital, Lucknow on 21.06.2003 has wrongly re-assessed the applicant's disability @11-14% for life without stating the grounds on which they base their disagreement with the previous Medical Board. He further submitted that Para 422 (h) of the Regulations for the Medical Services of the Armed Forces, 2010 (Revised Edition) provides

that “*Medical Boards when recording their opinion as to causation, degree of disability and fitness for service will be careful not to allow their decisions to be influenced by the proceedings of the previous Medical Board. However, in the event of disagreeing with the opinions expressed by previous Boards, they will state the grounds on which they base their disagreement*”. 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. Per contra, learned counsel for the respondents submitted that although the RSMB held on 19.04.1999 assessed the applicant's disability @20% from 19.04.1999 to 11.09.1999 and @20% for five years with effect from 12.09.1999 but the pension sanctioning authority i.e. Principal Controller of Defence Accounts (Pension) Prayagraj has accepted/reduced the applicant's disability @11-14% from 12.09.1999 to 18.04.2004 (below 20%), hence, applicant became ineligible for grant of disability element on account of disablement being below 20%. Further, the RSMB held on 21.06.2003 assessed the applicant's disability @11-14% for life. Therefore, condition for grant of disability element of pension does not fulfil in terms of Regulations 173 and 179 of Pension Regulations for the Army, 1961 (Part-I) and the competent authority has rightly stopped the benefit of disability element of disability pension to applicant. He pleaded for dismissal of Original Application.

5. We have given our considerable thoughts to both sides and have carefully perused the records. We have also gone through the records and we find that the questions which need to be answered are three folds:-

- (a) Whether the Principal Controller of Defence Accounts (Pensions), Allahabad has authority to overrule the opinion of RSMB held on 19.04.1999?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension for the period from 12.09.1999 to 11.09.2004?
- (c) Whether the applicant is entitled for disability element even if the disability is re-assessed below 20% by the RSMB held on 21.06.2003?

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 @60% for two years. However, the Pension Sanctioning authority i.e. Principal Controller of Defence Accounts (Pension) accepted the disability pension claim of the applicant and notified Disability Element for the disability @20% for five years from 01.03.1993 to 22.11.1997. The RSMB held on 12.09.1997 re-assessed the applicant's @20% for five years with effect from 23.11.1997. However, Principal Controller of Defence Accounts (Pension), Prayagraj granted disability pension to the applicant from 23.11.1997 to 11.09.1999. Further, the RSMB

held on 19.04.1999 re-assessed the applicant's disability @20% with effect from 11.04.1999 to 11.09.1999 and @20% with effect from 12.09.1999 for five years. However, the Principal Controller of Defence Accounts (Pension), Prayagraj reduced the applicant's disability @11-14% from 12.09.1999 to 18.04.2004 and stopped the applicant's disability element. The RSMB held on 21.06.2003 re-assessed the applicant's disability @11-14% for life.

7. The issue of sanctity of the opinion of a 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 RSMB held on 19.04.1999 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 held on 19.04.1999 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 @20% w.e.f. 19.04.1999 to 11.9.1999 and @20% w.e.f. 12.09.1999 to 20.06.2003 i.e. prior to date of RSMB held on 21.06.2003 which assessed the applicant's disability @11-14% for life.

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. 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 pension @20% w.e.f. 19.04.1999 to 11.9.1999 and @20% w.e.f. 12.09.1999 to 20.06.2003 to be rounded off to 50% may be extended to the applicant i.e. prior to date of RSMB held on 21.06.2003 which assessed the applicant's disability @11-14% for life.

12. Further, as per Regulation 186 (2) of Pension Regulations for the Army, 1961 (Part - I), an individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per cent. He shall however continue to draw the service element of disability pension. Since, applicant's disability element has been assessed at 11-14% (less than 20%) by the RSMB held on 21.06.2003,

applicant does not fulfil the requirement of Regulation 186 (2) of Pension Regulations for the Army, 1961 (Part-I) for the grant of disability element of disability after 20.06.2003.

13. Further, contrary view to RSMB held on 21.06.2003 to the extent of holding the applicant's disability at 11-14% (less than 20%) is not tenable in terms of Hon'ble Apex Court judgment in the case of ***Bachchan Singh vs Union of India & Ors***, Civil Appeal Dy No. 2259 of 2012 decided on 04th September, 2019 wherein their Lordships have held as under:-

“..... After examining the material on record and appreciating the submissions made on behalf of the parties, we are unable to agree with the submissions made by the learned Additional Solicitor General that the disability of the appellant is not attributable to Air Force Service. The appellant worked in the Air Force for a period of 30 years. He was working as a flight Engineer and was travelling on non pressurized aircrafts. Therefore, it cannot be said that his health problem is not attributable to Air Force Service. However, we cannot find fault with the opinion of the Medical Board that the disability is less than 20%.”

(underlined by us)

14. In addition to above, a bare reading of Regulation 186 (2) of Pension Regulations for the Army, 1961 (Part-I), makes it abundantly clear that an individual being re-assessed disability below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per cent. 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.”

15. In view of the discussions made above the applicant is not entitled for the grant of disability element of disability pension after 20.06.2003.

16. In view of the above, the **Original Application No. 1209 of 2023** deserves to be partly allowed, hence **partly allowed**. The impugned orders, stopping the applicant's claim for grant of disability element of disability pension, are set aside. The disability of the applicant is held @20% w.e.f. 19.04.1999 to 11.9.1999 and @20% w.e.f. 12.09.1999 to 20.06.2003 i.e. prior to date of RSMB held on 21.06.2003 which assessed the applicant's disability @11-14% for life. The applicant is entitled to get disability element @20% w.e.f. 19.04.1999 to 11.9.1999 and @20% w.e.f. 12.09.1999 to 20.06.2003 to be rounded off to 50% may be extended to the applicant i.e. prior to date of RSMB held on 21.06.2003 which assessed the applicant's disability @11-14% for life. The respondents are directed to grant disability element to the applicant @20% w.e.f. 19.04.1999 to 11.9.1999 and @20% w.e.f. 12.09.1999 to 20.06.2003 to be rounded off to 50% may be extended to the applicant i.e. prior to date of RSMB held on 21.06.2003 which assessed the applicant's disability @11-14% for life. The RSMB of the applicant was held on 21.06.2003 which assessed the disability of the applicant as @11-14% for life,

hence, the applicant is not entitled for the grant of disability element after 20.06.2003. 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.

17. No order as to costs.

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

(Justice Anil Kumar)
Member (J)

Dated: 28 November, 2024

AKD/-