

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 611 of 2023**Thursday, this the 28<sup>th</sup> day of November, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)**  
**Hon’ble Lt. Gen. Anil Puri, Member (A)”**

15208159W, Ex. Gnr. Baljeet Singh, S/o Surendra Singh, R/o Village – Sabli Kateli, PO – Muriya Kateli, Tehsil – Powayan, District – Shahjahanpur, Uttar Pradesh, Pin-242401.

**..... Applicant**Ld. Counsel for the : **Shri Dharam Raj Singh**, Advocate  
Applicant **Dr. Ashish Asthana**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, South Block of the Central Secretariat at Raisina Hill, New Delhi.
3. Office of the Artillery Records, Topkhana Abhilekh, C/o 56 APO, Nashik, Pin – 908802.
4. Principal Controller of Defence Accounts, Prayagraj (UP).

**.....Respondents**Ld. Counsel for the : **Shri Asheesh Agnihotri**, 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 :-

- a) *Issue/pass an order or direction of appropriate nature to set aside/quash the order No. B/40502/22/AG/PS-4 (1<sup>st</sup> Appeal) dated 13 Apr 2022 and order dated 03 Nov 2021 passed by OP No. 4.*
- b) *To issue/pass an order or direction to the respondents to grant disability element of disability pension @100% + CAA for life from date of discharge i.e. 30.11.2020 along with @12% interest on arrear in light of Hon’ble Apex Court judgments.*
- c) *Issue/pass an order or direction of appropriate nature to the respondents to grant of attender to the Applicant from the date of disability for life long.*
- d) *Deleted*
- e) *To allow the Original Application with cost in favour of Applicant against the respondents.*
- f) *Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstances of the case is also granted along with cost of the OA.*

2. Briefly stated, applicant was initially enrolled in the Regiment of Artillery of Indian Army 26.11.2003 and discharged on 30.11.2020 (AN) on completion of terms of engagement in Low Medical Category under Rule 13 (3) Item III (i) of the Army Rules, 1954. The applicant is in receipt of Service Pension. Before discharge from service, the Release Medical Board (RMB) held at Command Hospital (Central Command), Lucknow on 17.10.2020 assessed his disabilities (i) **‘COMPRESSION FRACTURE DV12 (OPTD) (S32.010)’ @100% for life**, (ii) **‘NEUROGENIC BLADDER (POST TRAUMATIC) WITH PERIURETHRAL ABCESS (OPTD) (N32.89)’ @100% for life**, (iii) **‘FRACTURE ACETABULUM (LT)**

**(S-32.4)** @50% for life and (iv) **'FRACTURE NECK OF FEMUR (RT) (S72001)** @50% for life, **composite disabilities @100% for life + CAA** and opined the disabilities to be **attributable to** military service. The disability claim of the applicant was however rejected by the Principal Controller of Defence Account (Pensions), Allahabad vide letter dated 04.10.2021 on the ground that the disabilities of the applicant were neither attributable to nor aggravated (NANA) by service stating that injuries sustained by the applicant while on Casual Leave under the provisions of Para 9 (f) (notes) of Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 which was communicated to the applicant vide letter dated 03.11.2021. The applicant preferred First Appeal dated 11.07.2022 which too was rejected vide letter dated 13.04.2022 which was communicated to the applicant vide letter dated 24.05.2022. 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 disabilities were found to be attributable to military service vide RMB which had also assessed the composite disabilities @100% for life with constant attendance allowance. He further pleaded that although the applicant was on Casual Leave from 21.10.2015 to 30.10.2015 and during the aforesaid Casual Leave the applicant met with an accident on 26.10.2015 while proceeding towards the railway station to get train reservation for his return journey to rejoin the duty on termination of his said leave and sustained injury

**“FRACTURE DV 12 (OPTD) WITH PARAPLEGIA SEVERE”**

which later on resulted into aforesaid disabilities. A Court of Inquiry was held at 137 Field Regiment on 05.09.2017 and subsequent days to investigate into the circumstances which the applicant had sustained and the said Court of Inquiry had opined that the injuries sustained by the applicant are attributable to military service. Accordingly, on the basis of the said Court of Inquiry, the Competent Authority on attributable factor in injury cases, i.e. Brigade Commander, 39 Mountain Artillery Brigade had conceded the injury as attributable to military service and recorded in Injury Report (IAFY-2006) on 30.11.2017. He further submitted that Principal Controller of Defence Accounts (Pension), Allahabad has no authority to overrule the opinion of RMB. He further submitted that as per Para 12(k) of the Entitlement Rules an accident which occurs when a person is not strictly “on duty” as defined may also be attributable to service. 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 @100% for life with constant attendance allowance.

4. Ld. Counsel for the respondents conceded that composite disabilities of the applicant @100% for life with constant attendance allowance have been regarded as **attributable to military service** 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 disabilities of the applicant are neither attributable to nor aggravated by military service stating that applicant was on casual leave and accident occurred during that period which is not covered as per rule as no causal connection has been established between the disabilities and military service, hence applicant is not entitled to disability element of disability pension. The First Appeal of the applicant was rejected by the Appellate Committee on First Appeal vide letter dated 13.04.2022 on the ground that *“the injuries were sustained by the applicant on 26.10.2015 when he was on Casual Leave. He was not performing any bonafide military duty at the material time of sustaining the injury. The circumstances of the incident have no causal connection with military service. hence, the disabilities are conceded as neither attributable to nor aggravated by military service in terms of Pra 6 and 9 of Entitlement Rules for Casualty Pensionary Awards, 2008”*. The applicant is not entitled for the grant of disability element of disability pension in terms of Regulation 53(a) of the Pension Regulations for the Army, 2008 which provides that *“An individual released/retired/ discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if*

*the accepted degree of disability is assessed at 20% or more”.*

Since the applicant is not entitled for the grant of disability element of disability pension, the question of rounding off of the disability element of disability pension does not arise. 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 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 element of disability pension?

6. This is a case where the disabilities of the applicant have been held as attributable to military service by the RMB as well as Court of Inquiry. Although the applicant was on Casual Leave from 21.10.2015 to 30.10.2015 but during the aforesaid Casual Leave on 26.10.2015 he met with an accident while proceeding towards the railway station to get train reservation for his return journey to rejoin the duty on termination of his said leave which is a causal connection between the disabilities/injuries and military service, therefore, the Court of Inquiry as well as RMB have held that the disabilities are attributable to military service. The RMB assessed

the composite disabilities @100% for life with constant attendance allowance. 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 17.10.2020 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 disabilities of the applicant should be considered as attributable to military service as have been opined by the RMB.

9. We also observe that applicant was 100% disabled as recommended by the RMB that his composite disabilities are assessed @100% for life with Constant Attendance Allowance. Therefore, the applicant shall also be granted Constant Attendance Allowance (CAA) in addition to disability element of pension in accordance with the rules/instructions issued by the Govt. from time to time. As per para 35(a) of the Amendment to Chapter VI & VII of Guide to Medical Officers (Military Pension) 2002, Govt. of India, Ministry of Defence letter No. 1(2) 2013-D (Pen/Pol) dated 27.04.2015 and PCDA (P) Allahabad Circular No. 543 dated



27.05.2015, applicant is entitled to Constant Attendance Allowance also.

10. In view of the above, the **Original Application No. 611 of 2023** 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. All the disabilities of the applicant are held as attributable to Military Service as have been opined by the RMB. The applicant is entitled to get disability element @100% for life + Constant Attendant Allowance from the next date of his discharge. The respondents are directed to grant disability element to the applicant @100% for life + Constant Attendant Allowance from the next date of his discharge. The respondents are further 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 the actual payment

11. No order as to costs.

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

(Justice Anil Kumar)  
Member (J)

Dated : 28 November, 2024

AKD/-