

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 976 of 2023

Friday, this the 29th day of November, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

No. 6615377 Ex. Sep. Indrakant Mishra, Son of Late Ramapati Mishra, R/o 86/73, Kotha Parcha, Prayagraj (UP)-211003.

..... Applicant

Ld. Counsel for the Applicant : **Mr. R. Chandra**, Advocate.
Ms. Supriya Srivastava, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ Post Office, New Delhi-110011.
3. The Officer-In-Charge, ASC Records (South), Bangalore-560007.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the Respondents. : **Mr. Ashish Kumar Singh**, Advocate
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 :-

- (I) *The Hon’ble Tribunal may be pleased to set aside order dated 16/06/2023 (Annexure No A-1).*
- (II) *The Hon’ble Tribunal may be pleased to direct the respondent No. 4 to issue a fresh Corrigendum PPO of disability element w.e.f. 10/12/2002 to for life in the light of fifth Re-Survey Medical Board along with its arrears and interest thereon at the rate of 18% per annum. Further disability element be rounded to 50%.*
- (III) *Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Indian Army on 24.11.1962 and was invalided out from service on 08.07.1966 in Low Medical Category under Rule 13 (3) Item III (iii) of the Army Rules, 1954 after rendering 03 years, 07 months and 02 days of service. As per Original Application, at the time of invalidation from service, the Invaliding Medical Board held Military Hospital, Delhi Cantt. on 31.05.1966 assessed his disability ‘**HANSEN’S DISEASE TUBERCULOID**’ @40% for two years and opined the disability to be **attributable to** service. Accordingly, the applicant was granted disability pension w.e.f. 08.07.1966 to 30.05.1968 vide

PPO No. D/4016/1967. The second Re-Survey Medical Board (RSMB) percentage was assessed @40% w.e.f. 31.05.1968 to 12.11.1970. In the third RSMB percentage was assessed @30% w.e.f. 13.11.1970 to 18.10.1980. In fourth RSMB percentage was assessed @20% w.e.f. 19.10.1980 to 30.03.1983. The fifth RSMB held at Military Hospital, Danapur on 02.04.1983 assessed the applicant's disability @20% **permanent**. After 30.03.1983, other RSMBs have been carried out and applicant was granted disability element till 09.12.2002 vide CDA (P), Allahabad PPO No.D/RA/4190/98. On 08.07.2019 the applicant demanded his all medical documents (IMB, all RSMBs) from CDA (P), Allahabad. On 12.11.2020, respondent No. 4 sent the all AFMSF-16, AFMSF-17 and all PPOs to respondent No. 3 so that respondent No. 3 could submit the claim of disability element w.e.f. 10.12.2002 to onwards. On 14.01.2021, respondent No. 3 sent all medical documents and PPOs to the applicant by stating that received erroneously and addressed to applicant. On 07.06.2023, the applicant submitted complaint on CPGRAM Portal. On 16.06.2023, respondent No. 3 replied that in terms of Para 595 of Regulations for the Army, 1987 (Revised Edition), service documents had been destroyed. Hence, due to non-availability of release/RSMB proceedings respondent No. 3 was unable to process his case to grant disability element for onwards period from 10.12.2002. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that as per Fifth RSMB held at Military Hospital, Danapur on 02.04.1983 the applicant disability was assessed @20% permanent, thus, there was no need of further RSMBs but after that respondents have carried out RSMBs and have stopped the disability element of disability of the applicant w.e.f. 10.12.2002 without having any authority and justification. He further submitted that the applicant was entitled to get disability element w.e.f. 01.04.1983 to for life but it was not done by respondents which is against the service laws/natural justice. Since the applicant was invalided out from service, he is entitled minimum 50% disability if his disability is assessed less than 20%. Ld. Counsel for the applicant pleaded that disability element of disability pension be granted to the applicant and benefit of rounding off to 50% from 10.12.2002 i.e. the date when it was stopped.

4. On the other hand, learned counsel for the respondents submitted that perusal of Original Application reveals that the applicant was invalided out from service on 08.07.1966 for **HANSEN'S DISEASE TUBERCULOID'** after rendering 03 years, 06 months and 14 days of service and took a long period of 33 years to file the instant Original Application for grant of disability pension with effect from 10.12.2002 onwards. He further submitted that applicant was non pensioner, therefore, his medical documents including constituents thereof have been destroyed

after expiry of retention period as per para 595 of Regulations for the Army 1987 (Revised Edition). Sheet Roll in respect of pensioners and non-pensioners are retained for a period of 50 years and 25 years respectively from the date of becoming non-effective. Further submission of learned counsel for the respondents is that since documents relating to applicant have already been destroyed on expiry of mandatory retention period of 25 years being a non-pensioner, therefore, degree of disablement cannot be ascertained at this stage. He pleaded the Original Application to be dismissed being devoid of merit.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are two folds:-

- (a) Whether the applicant is entitled for the grant of disability element of disability pension for life in view of the disability assessed as permanent by the RSMB held on 02.04.1983?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. In compliance of order dated 09.10.2024 the respondents have filed the copies of RSMB dated 07.04.1981 and 02.04.1983 along with affidavit. On going through the RSMB held at Military

Hospital, Danapur on 02.04.1983 we find that the applicant's disability was assessed @20% and in the column "**Duration of assessment**" the RSMB stated "**Permanent**". Since the applicant's disability was assessed @20% as Permanent by the RSMB held on 02.04.1983 there was no need to hold subsequent RSMBs from time to time. Further, since the applicant was invalided out from service on account of aforesaid disability and RSMB held on 02.04.1983 assessed the applicant's disability @20% as **Permanent**, we are of the opinion that the applicant is entitled for the grant of disability element for life.

7. Further, in the case of **Commander Rakesh Pande Versus Union of India & Others**, (Civil Appeal No. 5970 of 2019) decided on 28.11.2019, Hon'ble Apex Court has held as under :-

"Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual himself requests for a review. The applicant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @50% for life."

8. In view of the law laid down by the Hon'ble Apex Court in the case of **Commander Rakesh Pande Versus Union of India & Others** (supra), as the applicant's disability is permanent nature as has been opined by the RSMB held on 02.04.1983, the decision

once arrived at will be for life and applicant is entitled disability element of disability pension for life which cannot be restricted for a specific period.

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. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of ***Shiv Dass vs. Union of India***, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

12. As such, in view of the decision of Hon’ble Supreme Court in the cases of ***Union of India and Ors vs Ram Avtar & ors (supra)*** and ***Shiv Dass (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 life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

13. In view of the above, the **Original Application No. 976 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 applicant is entitled to get disability element @20% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @20% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of

filing of Original Application. The date of filing of Original Application is 11.08.2023. 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.

14. No order as to costs.

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

(Justice Anil Kumar)
Member (J)

Dated : 29 November, 2024

AKD/-