

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 296 of 2020**Friday, this the 22nd day of October, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

IC-39275 K Col. Suresh Pratap Singh (Retd.), son of Shri S.P. Singh, Resident of H. No. A 34 AWHO, Tyagi Vihar, Lucknow-226002.

..... ApplicantLd. Counsel for the : **Shri Virat Anand Singh**, Advocate
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), DHQ PO, New Delhi-110011.
3. Addl. Dte. Gen. Of Manpower (Policy/Planning)/MP6 (D), AG’s Branch, IHQ of MOD (Army), Wing No. 05, First Floor, West Block – III, R.K. Puram, New Delhi-110066.

.....RespondentsLd. Counsel for the : **Shri Ashish Kumar Singh**, Advocate
Respondents. 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) *To direct the respondents to grant Disability Pension to the applicant from date of discharge (04 Sep 2017) with rounding off benefit (20% to 50%) as applicable, along with arrears of pension with interest of 12% p.a.*
- (ii) *To pass such other order(s) which their Lordships may deem fit and proper in the existing facts and circumstances of the case.*
- (iii) *Allow this application with cost of rupees 50,000/-.*

2. Briefly stated, applicant was commissioned in the Indian Army on 13.12.1980 and was retired on 30.09.2013 on attaining the age of superannuation. The applicant was re-employed on 01.10.2013 and was retired on 04.09.2017 in Low Medical Category. At the time of retirement from service, the Release Medical Board (RMB) held at Base Hospital, Lucknow in the month of September, 2017 assessed his disabilities (i) '**POTT'S SPINE D10-11**' @20% for life, and (ii) '**SPONDYLOARTHRITIS**' @20% for life, **composite disabilities @40% for life**, and opined the disabilities to be **attributable to and aggravated by** military service respectively. The disability claim of the applicant was however rejected by the Competent Authority vide letter dated 13.07.2018 on the ground that as per para 25(a) Special Army Instructions 1/S/80 disability pension to a re-employed officer is granted only when his service was terminated on account of disability attributable to or aggravated by military service and the applicant's re-employment was not terminated due to disability. The applicant preferred First Appeal dated 25.02.2019 which too

was rejected by the respondents vide letter dated 01.05.2019. 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 and aggravated by military service respectively vide RMB dated 04.09.2017 which had also assessed the composite disabilities @ 40% for life. He further pleaded that at the time of commission or re-employment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The diseases of the applicant were contracted during the military service. Ld. Counsel for the applicant relied upon the Judgment dated 27.04.2018 passed by this Tribunal in the case of **Colonel Ram Vishwas Singh (Retired) Versus Union of India and Others**. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, as such the applicant is entitled to disability element of disability pension and its rounding off to 50%.

4. Ld. Counsel for the respondents conceded that composite disabilities of the applicant @40% for life have been regarded as attributable to and aggravated by military service respectively by the RMB, but Competent Authority has rejected the claim of the

applicant in terms of Para 72 (iii) of Pension Regulations for the Army, 2008, Part- II and Para 25(a) of SAI 1/S/80, which stipulates that the disability pension to a re-employed officer is granted only when his services are terminated on account of disability attributable to or aggravated by military service and in the instant case the applicant's re-employment services was not terminated on account of any of the disabilities held attributable to or aggravated by military service and he retired from military services on completion of re-employment, hence applicant is not entitled to disability element of disability pension. 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 Release Medical Board proceedings as well the records and we find that the questions which need to be answered are of two folds:-

- (a) Whether the Competent Authority has authority to overrule the opinion of RMB?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. In the case of **Colonel Ram Vishwas Singh (Retired)** (*Supra*) this Tribunal has dealt with the aspect of a re-employed officer. Para 6 of the said Judgment is reproduced as under :-

“6. After considering all issues, we have tried to understand the status of a re-employed officer. As per facts which are on record & have emerged during hearing following aspects of a re-employed officer are clear.

(a) Re-employment of Army Officers upto Colonel rank and upto the age of 57/58 is required to cater for short fall of large number of officers in Army.

(b) The re-employed officer are re-employed in the ranks lower than the one they held at the time of retirement.

(c) They are subject to Army Act, 1950 and all rules as applicable to a Regular Army Officer are by and large applicable on re-employed officers.”

7. In view of above Judgment, we are of the opinion that re-employed are subject to Army Act, 1950 and all rules as applicable to a regular army officer are by and large applicable to re-employed officers.

8. In the instant case there is no dispute that the applicant was commissioned in the Indian Army on 13.12.1980, retired on 30.09.2013, re-employed on 01.10.2013 and was retired on 04.09.2017 in Low Medical Category and the Release Medical Board has assessed applicant's composite disabilities @40% for life, first disability as Attributable to and second disability as Aggravated by military service.

9. We find that the applicant's claim for grant of disability element of disability pension was rejected by the respondents in

terms of Para 72 (iii) of Pension Regulations for the Army, 2008, Part- II and Para 25(a) of Special Army Instructions 1/S/80, which stipulates that the disability pension to a re-employed officer is granted only when his service was terminated on account of disability attributable to or aggravated by military service. We are of the considered opinion that the Special Army Instructions 1/S/80 does not have the statutory power to arbitrarily stop the flow of benefit which flow towards the applicant. In addition, we are also of the opinion that binding re-employed officers with Army Act, 1950, like serving officers and thereafter depriving them the benefit of disability pension similar to serving officers is violative of Article 1 of the Constitution of India.

10. Further, 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 in the

month of September, 2017 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.”

11. Thus in light of the aforesaid judgment (supra) it is clear that the disabilities assessed by RMB in September, 2017 cannot be overruled by the Competent Authority, hence the decision of Competent Authority is void. Hence, we are of the opinion that both the disabilities of the applicant should be considered as attributable to and aggravated by military service as have been opined by the RMB at the time of retirement from re-employment.

12. 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."*

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)***, we are of the considered view that benefit of rounding off of disability pension @40% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his retirement from re-employment.

14. In view of the above, the Original Application No. 296 of 2020 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. The disabilities of the applicant are held as attributable to and aggravated by Military Service as has been opined by RMB held in the month of September, 2017. The applicant is entitled to get disability element @40% for life which would be rounded off to 50% from the next date of his retirement from re-employment. The respondents are directed to grant disability element to the applicant @40% for life which would stand rounded off to 50% for life from the next date of his retirement from re-employment. 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.

15. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 06 July, 2021

AKD/-