

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 93 of 2021**Monday, this the 11<sup>th</sup> day of October, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**Ex. Nk. Birija Bhar Ram, Son of Kasuni Dhar, Resident of Rasara,  
District Balia.**..... Applicant**Ld. Counsel for the Applicant : **Shri Prashant Kumar Singh**, Advocate &  
**Shri Shashank Singh**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence,  
New Delhi-110011.
2. The Chief of the Army Staff, COAS Secretariat, IHQ (Army),  
South Block, New Delhi-110011. .
3. Officer in Charge, Defence Security Corps Records, Mill  
Road, Cannanore, Kerala, 670013.
4. Principal Controller of Defence Accounts (Pension),  
Draupadi Ghat, Newa Sadar Bazaar, Prayagraj (U.P.)-  
211014.

**.....Respondents**Ld. Counsel for the Respondents. : **Ms. Deepti Prasad Bajpai**, Advocate  
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) *any order, or direction of appropriate nature to set aside the Order No. G3/99/3647/VII-A, dated 05.01.2000, passed by the Respondent No. 4 by which the claim for disability pension of the applicant has been rejected which is contained as Annexure No. 1 to this Original Application.*
- ii) *any order, or direction of appropriate nature to set aside the Office/Letter No. Pen/DP-2/10211541/70, dated 31.01.2000 issued by the Respondent No. 3 by which the applicant’s claim for disability pension has been rejected and intimated which is contained as Annexure No. 2 to this Original Application.*
- iii) *any order, or direction of appropriate nature, directing the Respondents to extent the benefit of disability pension to the applicant as applicable from time to time by rounding off with all consequential benefits.*
- iv) *any order, or direction of appropriate nature, directing the Respondents to pay the arrears of disability pension from the date of retirement of applicant i.e. 31.10.1999 with interest @18% with all consequential benefits.*
- v) *Any other suitable relief this Hon’ble Court deems fit and proper may also be granted.*

2. Briefly stated, applicant was initially enrolled in the Indian Army 09.12.19071and was discharged on 21.08.1979 under TA Act Rule 16(2) of TA Regulations at his own request after rendering 02 years and 307 days embodied service. He was re-enrolled in Defence Security Corps (DSC) on 08.10.1979, opted to count his former service towards DSC service, and was discharged from DSC on 31.10.1999 (AN) under in Low Medical Category [BEE, (Permanent)] under Rule 13 (3) Item III (i) of the Army Rules, 1954

after rendering 22 years, 11 months and 01 day of qualifying service. At the time of discharge from DSC service, the Release Medical Board (RMB) assessed his disability '**ESSENTIAL HYPERTENSION**' @20% for five years and opined the disability to be **Aggravated by** military service. The disability claim of the applicant was however rejected by the Principal Controller of Defence Account (Pensions), Allahabad vide letter dated 05.01.2000 on the ground that the disability of the applicant was neither attributable to nor aggravated by military service and constitutional in nature which was communicated to the applicant vide letter dated 31.01.2000. 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 disability was found to be attributable to military service vide RMB which had also assessed the disability @20% for five years. He further pleaded that at the time of enrolment, 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 disease of the applicant was contracted during the service. 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 pension and its rounding off to 50%.

4. Ld. Counsel for the respondents conceded that disability of the applicant @20% for five years has been regarded as **aggravated 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 disability of the applicant is neither attributable to nor aggravated by military service, hence applicant is not entitled to 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 records and we find that the questions which need to be answered are of 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 pension?

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 @20% for five years. 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 27.01.1999 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 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 disability of the applicant should be considered as aggravated by military service 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. 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 @ 20% for five years to be rounded off to 50% for five years may be extended to the applicant from the next date of his discharge.

11. Since the applicant's RMB was valid for five years w.e.f. 31.10.1999, hence, the respondents will now have to conduct a fresh Re-Survey Medical Board for him to decide his future eligibility to disability element of disability pension.

12. In view of the above, the **Original Application No. 93 of 2021** deserves to be allowed, hence **allowed**. The impugned orders dated 05.01.2000 and 31.01.2000, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The disability of the applicant is held as aggravated by Military Service as has been opined by RMB. The applicant is entitled to get disability element @20% for five years which would be rounded off to 50% for five years from the next date of his discharge. 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 the next date of his discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element of disability pension. 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.

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 11 October, 2021

AKD/-