

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)**

ORIGINAL APPLICATION No. 133 of 2022

Wednesday, this the 07th day of September, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 13945324N Ex. Nk. Harish Chandra Singh Rautela, S/o Sri Late Nathu Singh Rautela, R/o House No. 26-375/1 Shivalik Vihar Phase II Canal Road, PO Kathgodam, District Nainital (Uttarakhand).

..... Applicant

Ld. Counsel for the Applicant : **Shri C.S. Rawat**, Advocate,
Shri Nitin Singh, Advocate and
Shri Digvijay Singh Bisht, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Central Civil Secretariat, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), New Delhi.
3. Director Pension/Policy, Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi.
4. Record Officer, Army Medical Corps, C/o 56 APO.
5. P.C.D.A. (Pension), Allahabad.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Rajesh Sharma**, 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 :-

“Humble petitioner/applicant seeks prayer to summon the entire service records along with medical records including the file of PCDA (P), Allahabad and thereafter this Hon’ble Tribunal set aside/quash the impugned order dated 21.03.2002 to the extent by which the pension sanctioning authority {PCDA (P)} has acted beyond the recommendation of medical board and reduce the quantum of disability 20% to 1-5% (less than 20%).

Further, this Hon’ble Tribunal may graciously be pleased to direct the respondents to grant disability pension commutation benefit as per certificate issued by the President Medical Board M.H. Pune on 09.05.1997.

Humbly the petitioner/applicant further seeks prayer to direct the respondents to grant disability pension from 08.05.1999 rounding off 50% with arrear along with 12% p.a.”

2. Briefly stated, applicant was enrolled in the Army Medical Corps of Indian Army 20.02.1978 and discharged from service with effect from 01.03.1998 on completion of terms of engagement in Low Medical Category under Rule 13 (3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital (CTC), Pune on 09.05.1997 assessed his disability ‘**CALCANEAL SPUR BOTH HEEL (BILATERAL)**’ @30% for two years and opined the disability to be **Aggravated by** military service. Accordingly, the Principal Controller of Defence Accounts (Pension), Allahabad granted

disability element of disability pension @20% for two years with effect from 01.03.1998 to 08.05.1999. The Re-Survey Medical Board (RSMB) held at Base Hospital, Lucknow on 18.06.1999 assessed applicant's disability @20% for five years. The Principal Controller of Defence Account (Pensions), Allahabad has reduced/re-assessed the applicant's disability from 20% to 1-5% (less than 20%) for ten years with effect from 09.05.1999 to 17.06.2009 and discontinued the disability element of disability pension which was communicated to the applicant vide letter dated 03.02.2000. Before completion of assessment period, the Re-Survey Medical Board held at Base Hospital, Lucknow on 19.06.2002 assessed applicant's disability @1-5% for life with effect from 18.06.2009. The applicant's claim for the grant of disability element of disability pension was rejected vide letter dated 04.07.2003 which was communicated to the applicant vide letter dated 24.10.2003. The applicant preferred application dated 02.03.2021 which too was rejected by the respondents vide letter dated 07.04.2021. 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 aggravated to military service vide RMB dated 09.05.1997. The Re-Survey Medical Board held on 18.06.1999 had assessed the disability @20% for five years which has been re-assessed/reduced to 1-5% for ten years by the Principal Controller of Defence Accounts (Pension), Allahabad. He

further submitted that Principal Controller of Defence Accounts (Pension), Allahabad has no authority to overrule the opinion of Re-Survey Medical Board held on 18.06.1999. 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. Ld. Counsel for the respondents conceded that disability of the applicant @20% for two years has been regarded as **aggravated by** the RMB, accordingly, the applicant was granted disability element of disability pension. He further submits that although the Re-Survey Medical Board held on 18.06.1999 assessed applicant's disability @20% for five years but pension sanctioning authority i.e. Principal Controller of Defence Accounts (Pensions), Allahabad has re-assessed/reduced the disability @1-5% for ten years and accordingly, discontinued the disability element of disability pension. He further submits that Re-Survey Medical Board held on 19.06.2002 assessed applicant's disability @1-5% for life with effect from 18.06.2009. Accordingly, the Principal Controller of Defence Accounts (Pension), Allahabad has rightly rejected the applicant's claim for the grant of 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

records and we find that the questions which need to be answered are of three folds:-

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

6. This is a case where the disability of the applicant has been held as aggravated by military service @20% by the RMB for two years. Accordingly, the applicant was granted disability element of disability pension for two years with effect from 01.03.1998 to 08.05.1999. The RSMB held on 18.06.1999 assessed the applicant's disability @20% for five years with effect from 18.06.1999. However, the opinion of the RSMB has been overruled by Principal Controller of Defence Accounts (Pensions), Allahabad and the disability has been reduced from 20% to @1-5% for ten years.

7. The issue of sanctity of the opinion of a Release Medical Board/Re-Survey 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 18.06.1999 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 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 @20% for five years as has been opined by the RSMB held on 18.06.1999.

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(01)/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(01)/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 five years to be rounded off to 50% for five years may be extended to the applicant with effect from 18.06.1999.

12. Further, the RSMB held on 19.06.2002 assessed applicant's disability @1-5% for life with effect from 18.06.2009.

13. 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 re-assessed at 1-5% (less than 20%) for life by the Re-Assessment Medical Board held on 19.06.2002 with effect from 18.06.2009, applicant does not fulfil the requirement of Regulation 186 (2) of Pension Regulations for the Army, 1961 (Part-I).

14. Further, contrary view to Re-Assessment Medical Board held on 19.06.2002 to the extent of holding the applicant's disability at 1-5% (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)

15. In light of the above judgment, inference may be drawn that Medical Board is a duly constituted body and findings of the board should be given due credence.

16. 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.”

17. In view of the discussions made above, the applicant is not entitled for disability element of disability pension after completion of five years with effect from 18.06.1999.

18. In view of the above, the **Original Application No. 133 of 2022** deserves to be partly allowed, hence **partly allowed**. The impugned orders, re-assessing/reducing the applicant's disability from 20% to 1-5% by the Principal Controller of Defence Accounts (Pension), Allahabad, are set aside. The disability of the applicant is held @20% for five years with effect from 18.06.1999 as has

been opined by RSMB held on 18.06.1999. The applicant is entitled to get disability element @20% for five years which would be rounded off to 50% for five years with effect from 18.06.1999 to 17.06.2004. The respondents are directed to grant disability element to the applicant @ 50% for five years with effect from 18.06.1999 to 17.06.2004. 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.

19. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 07 September, 2022

AKD/-