

Court No. 1 (E. Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 412 of 2021**

Thursday, this the 27th day of January, 2022

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

Ex. Nk. Madan Singh, No. 4167664 N S/o Late Pann Singh Bisht,
of Charlie Company, 17 Kumaon Regiment, R/o 592K./217
Defence Colony, Telibagh, Lucknow, PIN 226029.

..... **Applicant**

Ld. Counsel for the : **Shri Pawan Bisht**, Advocate
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Army Headquarters, New Delhi.
3. Kumoun Records Office, through Senior Record Officer, Ranikhet, PIN-263645, C/o 56 APO.
4. Medical Officer, Command Hospital, Central Command, Lucknow, PIN – 226021, C/O 56 APO.
5. Controller of Defence Accounts (P), Allahabad, Draupadi Ghat, Sadar Bazaar, Prayagraj, Uttar Pradesh.

.....**Respondents**

Ld. Counsel for the : **Ms. Appoli Srivastava**, 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:-

“That it is most respectfully prayed that this Hon’ble Tribunal may very kindly be pleased to direct the respondents to revise the disability percentage from the day of retirement as well as medical category of the applicant from (11-14%) to 75% relatively BEE (P) to CEE (P) disability percentage assessed at the time of retirement was already very low which was 20% it is pertinent to mention here that petitioner suffered from spine injury (L4 & L5) as the applicant couldn’t able to get promoted due to the his medical condition ultimately he was discharged due to his medical disability.”

2. Briefly stated, applicant was enrolled in the Kumaon Regiment of Indian Army on 24.01.1976 and was discharged on 31.01.1993 (AN) in Low Medical Category ‘BEE’. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Dehradun (Uttarakhand) on 04.06.1992 assessed his disability ‘**PIVD L-4, L-5 (OPTD) 722**’ @20% for two years and opined the disability to be **Aggravated by** military service. Accordingly, the applicant was granted disability element from 01.02.1993 to 03.06.1997. Re-Survey Medical Board (RSMB) held on 08.04.1997 assessed applicant’s disability @20% for two years. Accordingly, he was granted disability element from 04.06.1997 to 07.04.1999. Thereafter, Re-Survey Medical Board held on

26.02.1999 assessed applicant's disability @20% for two years. The disability claim of the applicant was however rejected by the Principal Controller of Defence Account (Pensions), Allahabad vide letter dated 29.04.1999 on the ground that disability is less than 20% i.e. 11-14% for ten years which was communicated to the applicant vide letter dated 17.05.1999. The applicant preferred First Appeal which too was rejected vide letter dated 18.09.2000. 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 **aggravated by** military service vide RMB which had also assessed the disability @20% for two years. Accordingly, the applicant was granted disability element for two years. Again Re-Survey Medical Board assessed the applicant's disability @20% for two years. Accordingly, the applicant was again granted disability element for further two years. The Re-Survey Medical Board held on 26.02.1999 assessed applicant's disability @20% for two years. He further pleaded that the Principal Controller of Defence Accounts (Pension) has no power to overrule the opinion of Re-Survey Medical Board held on 26.02.1999. 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 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 disability of the applicant @20% for two years has been regarded as **aggravated by** the RMB, accordingly, the applicant was granted disability element. Re-Survey Medical Board held on 08.04.1997 also assessed applicant's disability @20%, accordingly, the applicant was again granted disability element for further two years. He further submitted that although the Re-Survey Medical Board held on 26.02.1999 also assessed applicant's disability @20% for two years but pension sanctioning authority i.e. Principal Controller of Defence Accounts (Pensions), Allahabad has rejected the claim of the applicant on the ground that applicant's disability is less than 20% i.e. 11-14% for ten years, hence applicant is not entitled to disability element of disability pension. However, he conceded that Records The Kumaon Regiment vide letter dated 25.07.2003 intimated Base Hospital, Lucknow to arrange for assembling Medical Board to reassess the disability of the applicant but the applicant failed to report to Base Hospital, Lucknow for assessment of his disability. 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 Re-Survey Medical Board held on 26.02.1999?
- (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 last Re-Survey Medical Board held on 26.02.1999 assessed the applicant's disability @20% for two years. However, the opinion of the Re-Survey Medical Board has been overruled by Principal Controller of Defence Accounts (Pensions), Allahabad and the applicant's disability has been reduced to less than 20% i.e. 11-14% for ten years.

7. The issue of sanctity of the opinion of a 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 Re-Survey Medical Board held on 26.02.1999 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 Re-Survey Medical Board held on 26.02.1999 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 @20% for two years as has been opined by the Re-Survey Medical Board held on 26.02.1999.

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. 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 two years to be rounded off to 50% for two years may be extended to the applicant from 08.04.1999.

11. Since the applicant's Re-Survey Medical Board was valid for two years w.e.f. 08.04.1999, hence, the respondents will now have to conduct a fresh Re-Survey Medical Board for him to decide his future eligibility to disability pension.

12. In view of the above, the **Original Application No. 412 of 2021** 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 disability of the applicant is held as 20% for two years as has been opined by the Re-Survey Medical Board held on 26.02.1999. The applicant is entitled to get disability element of disability pension @20% for two years which

would be rounded off to 50% for two years from 08.04.1999. The respondents are directed to grant disability element of disability pension to the applicant @20% which would stand rounded off to 50% for two years from the 08.04.1999. 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. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 27 January, 2022

AKD/-