

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 407 of 2023**Tuesday, this the 16th day of April, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

IC-54919W Col. Dev Raj Gupta, S/o Late R.P. Gupta, R/o H. No.2/60 Vishwas Khand, Gomti Nagar, District Lucknow, UP-226010.

..... ApplicantLd. Counsel for the Applicant : **Shri S.G. Singh**, Advocate
Shri Anand Kumar Yadav, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Additional Directorate General/Adjutant General’s Branch/Policy & Planning/MP-6(D), Integrated HQ of Ministry of Defence (Army), West Block-III, R.K. Puram, New Delhi-110066.
4. Additional Directorate General of Personnel Services/AG’s Branch/PS-4 (1st Appeal), Integrated HQ of Ministry of Defence (Army), 5th Floor ‘A’ Block, Room No. 527, Defence Office Complex, KG Marg, New Delhi-110001.
5. Additional Dte General of Manpower ORO/MP-6(D)/Adjutant General’s branch, Integrated HQ of Ministry of Defence (Army), Wing No. 5, First Floor, West Block-III, R.K. Puram, New Delhi-110066.

.....RespondentsLd. Counsel for the Respondents. : **Shri Rajiv Pandey**, 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 :-

- (a) *Issue/Pass an order or direction of appropriate nature whereby commanding the respondents to produce the record in original and thereafter quash the impugned orders dated 21.01.2022, 09.05.2022 and 18.11.2022 whereby rejecting the claim of the applicant for disability pension annexed as Annexure no. A-1 (i), (ii) and (iii) respectively with the application.*
- (b) *Issue/Pass an order or direction of appropriate nature whereby commanding the respondents to grant the disability pension to the applicant forthwith.*
- (c) *Allow the application with all consequential benefits with exemplary cost.*

2. Briefly stated, applicant was initially commissioned in the Indian Army 06.03.1993 and was retired on 30.06.2021 (AN) on attaining the age of superannuation. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Faizabad on 29.01.2021 assessed his disability ‘**PRIMARY HYPERTENSION (I-10)**’ @30% for life and opined the disability to be **Aggravated by** military service. The disability claim of the applicant was however ‘NOT APPROVED’ by the Competent Authority vide letter dated 21.01.2022 on the ground that the disability of the applicant was neither attributable to nor aggravated by military service. The applicant preferred First Appeal dated 17.02.2022 which too was ‘NOT APPROVED’ vide letter dated 09.05.2022. The applicant preferred Second Appeal dated

24.06.2022 which too was rejected vide letter dated 18.11.2022. 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 @30% for life. He further submitted that Competent Authority has no authority to overrule the opinion of RMB. 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 @30% for life has been regarded as **aggravated by** the RMB, but pension sanctioning authority i.e. Competent Authority has 'NOT APPROVED' the claim of the applicant on the ground that the disability of the applicant is neither attributable to nor aggravated by military service since the applicant was in medical category for obesity and the obesity is a risk factor for developing hypertension and onset of disability was at peace station (Gangtok), hence applicant is not entitled to disability element of disability pension. He further submitted that the opinion of the RMB is recommendatory in nature and has to be approved by Competent Administrative as per Para 2(a) of policy letter No.1(2)/2002/D (Pen-LC) dated 01.09.2005 and clarified vide

AG/PS-5 letter dated 20.07.2006. 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 Competent Authority has authority to overrule the opinion of RMB?

(b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. This is a case where the disability of the applicant has been held as aggravated by military service by the RMB endorsing that *“Onset of disease in Sikkim (Peace Station). However, Officer has been posted in Hard Field/CIOPs Area (Pallanwala), where his disability was considered aggravated due to stress & strain of Military Service as per Para 43 Ch-VI of GTMO 2008 (as per recat board on 02 Feb 2018 at 17 GMH)”*. The RMB assessed the disability @30% for life. However, the opinion of the RMB has been overruled by Competent Authority 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 over ruling the opinion of RMB held on 29.01.2021 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 Competent Authority, hence the decision of Competent Authority 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 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. 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/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @30% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his retirement.

12. In view of the above, the **Original Application No. 407 of 2023** 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 aggravated by Military Service as has been opined by RMB. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% for life from the next date of his retirement. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life from the next date of his retirement. 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 Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 16 April, 2024

AKD/-