

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 441 of 2023

Monday, this the 15th day of April, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Maj. Gen. Bhaskar Kalita, YSM (IC-42926A), C/o Col. Gautam Kalita, Tower 2, Flat No. 1102, Vinamra Khand, Gomti Nagar, Lucknow-226010.

..... Applicant

Ld. Counsel for the Applicant : **Col. A.K. Srivastava (Retd.)**, Advocate
Shri Amarendu Srivastava, Advocate

Versus

1. The Secretary, Government of India (MoD), South Block, DHQ P.O., New Delhi-110001.
2. The Chief of Army Staff, Integrated HQ of MoD (Army), South Block, DHQ P.O., New Delhi-110001.
3. Officer Record Office, ADG MP (P&P)-5 & 6, IHQ of MoD (Army), West Block-III, R.K. Puram, New Delhi-110066.
4. Pr. Controller of Defence Accounts (PCDA) (P), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the Respondents. : **Dr. Shailendra Sharma Atal**, 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 to the respondents to summon and quash/set aside their orders leading to denial of applicant’s 30% disability element of pension duly rounded of to 50% due to his 30% disability due to Coronary Artery Disease DVD/PAMI to RCA, in spite of it being assessed by RMB dated 16 Jun 2022 as aggravated by Military service for life.*
- (b) *Issue/Pass an order or direction of appropriate nature to the respondents to summon and quash/set aside ADGPS/AG’s Branch/PS-4 (1st Appeal) IHQ of MoD (Army), New Delhi letter dated 16.02.2023 rejecting applicant’s 30% disability element of pension, duly rounded off to 50%, due to 30% disability of Coronary Artery Disease DVD/PAMI to RCA by considering it as neither attributable to nor aggravated by military service by arbitrarily and illegally misconstruing it’s onset in peace area (Delhi), in spite of the fact it has been endorsed in various medical boards including RMB dated 16.06.2022 wherein his said disability has also been opined as aggravated by military service. Accordingly, the applicant is liable to be entitled to 30% disability element of pension duly rounded off to 50% for life.*
- (c) *Issue/Pass an order or direction of appropriate nature to the respondents to summon and quash/set aside ADG MP (P&P), IHQ ORO/MP-7 of MoD (Army), New Delhi letter dated 18.11.2022 rejecting applicant’s 30% disability element of pension duly rounded off 50 50% due to his 30% disability of Coronary Artery Disease DVD/PAMI to RCA by considering it as neither attributable to nor aggravated by military service in peace area (Delhi) in spite of the fact it has been endorsed in various medical boards including*

RMB dated 16.06.2022 which has also opined that it was aggravated by military service. Accordingly, the applicant is entitled to 30% disability element of pension duly rounded off to 50% for life.

- (d) *Issue/Pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (e) *Allow this application with cost and 18% interest on arrears.*

2. Briefly stated, applicant was initially commissioned in the Indian Army 08.06.1985 and was retired on 30.11.2022 (AN) on attaining the age of superannuation. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Shillong on 16.06.2022 assessed his disability '**CORONARY ARTERY DISEASE – DVD/PAMI TO RCA (I 21.1)**' @30% for life as **aggravated by** military service due to service as onset of disability while serving in Field area. The disability claim of the applicant was however rejected by the Competent Authority vide letter dated 18.11.2022 on the ground that the disability of the applicant was neither attributable to nor aggravated by military service. The applicant preferred First Appeal dated 23.11.2022 which too was rejected vide letter dated 16.02.2023. The applicant preferred Second Appeal dated 20.04.2023 but of no avail. 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 @20% life has been regarded as **aggravated by** the RMB, but pension sanctioning authority i.e. Competent Authority 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 element of disability pension. He further submitted that the onset of the disability was on 14.12.2014 while in a peace station (Delhi) and the applicant is a chronic smoker. There is no service factors associated in this disability. As such the applicant's claim for the grant of disability element of disability pension has been rightly rejected by conceding the disability as NANA by military service. 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 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. The RMB assessed the disability @30% for life. However, the opinion of the RMB has been overruled by the 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 16.06.2022 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 the 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 cases of ***Union of India and Ors vs Ram Avtar & ors (supra)*** and ***Shiv Dass (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. 441 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 Army Service. 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 further 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 the actual payment.

13. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 15 April, 2024

AKD/-