

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 302 of 2021**Monday, this the 03<sup>rd</sup> day of January, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 14512987, Ex. Naik Madan Kumar, Son of Shri Ram Dhari Ram, resident of Village – Kamuddinpur, Post – Khurhat, District – Mau (U.P.)-276403.

**..... Applicant**Ld. Counsel for the Applicant : **Shri V.P. Pandey**, Advocate and  
**Shri R.K. Singh**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi.
3. Officer In-Charge Records, EME Records, PIN-900453, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

**.....Respondents**Ld. Counsel for the Respondents. : **Shri Ashish Kumar Singh**, 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:-

- “(a) *To summon and quash the rejection order passed by respondent No. 4 on 28 Feb 1990 rejecting the disability pension claim of the applicant.*
- (b) *To summon and quash the rejection order passed by First Appellate Committee on 08 Jan 1991 rejecting the disability pension claim of the applicant.*
- (c) *To issue/pass an order or direction to the respondents to grant disability pension to the applicant @20% for two years as assessed by the Release Medical Board and to conduct the Re-Survey Medical Board to assess the further disability of the applicant and grant him disability pension along with arrears and benefits of rounding off to the applicant.*
- (d) *Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- (e) *Cost of the O.A. be awarded to the applicant.”*

2. Briefly stated, applicant was enrolled in the Corps of EME of Indian Army on 25.07.1973 and was discharged on 31.07.1989 (AN) in Low Medical Category under Rule 13 (3) Item iii (v) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at 166 Military Hospital on 26.06.1989 assessed his disability ‘**ESSENTIAL HYPERTENSION (401, V-67)**’ @20% for two 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 12.02.1990 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 28.02.1990. The applicant preferred First Appeal which too was rejected vide letter dated 08.01.1991. The applicant also preferred an application dated 20.01.2021 which too was rejected vide letter dated 04.02.2021. 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 by** military service vide RMB which had also assessed the disability @20% for two years. He further pleaded that the Principal Controller of Defence Accounts (Pension) has no power 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 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, 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

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 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 two 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. As for as the benefit of Rounding off/Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding for period in question i.e. two years from 31.07.1989.

10. Since the applicant's RMB was valid for two years w.e.f. 31.07.1989, hence, the respondents will now have to conduct a fresh Re-Survey Medical Board for him to decide his future eligibility to disability pension.

11. In view of the above, the **Original Application No. 302 of 2021** deserves to be allowed, hence, **allowed**. The impugned orders dated 12.02.1990, 28.02.1990, 08.01.1991 and 04.02.2021, 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 the RMB. The applicant is entitled to get disability element of disability pension @20% for two years from the next date of his discharge. The respondents are directed to grant disability element of disability pension to the applicant @20% for two 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 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 : 03 January, 2022

AKD/-