

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 652 of 2023**Monday, this the 15<sup>th</sup> day of January, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**Lt. Commander L. Sai / Visawanath (Retd.), D/3/61, Sector-D3,  
House No. 61, Sushant Golf City, Shaheed Path, Lucknow -  
226030.**..... Applicant**Ld. Counsel for the : **GP. Capt. Y. Venugopal (Retd.)**, Advocate  
Applicant **Shri Amit Asthana**, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence,  
South Block, New Delhi -110001.
2. The Chief of Naval Staff, Integrated HQ of MoD (Navy),  
104, South Block, New Delhi -110011.
3. The Commodore, IHQ MoD (Navy), Dte of Pay &  
Allowances, D-II Wing, Sena Bhawan, New Delhi -110011.
4. PCDA (Navy), Post Office No. 589, No.1, Cooperage Road,  
Mumbai -400039.

**.....Respondents**Ld. Counsel for the : **Shri Arun Kumar Sahu**, Advocate  
Respondents. **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) *To issue/pass an order or direction of appropriate nature to the Respondents to set aside /quash the impugned orders dated 28.06.2022 and 02.02.2023.*
- (b) *Direct the Respondents to treat the Applicants disability, viz, 'Bronchial Asthma' as attributable to and/ or aggravated by the service.*
- (c) *To direct the Respondents to round off the disability element of Applicant's Disability of 'Bronchial Asthma' from 20% to 50%.*
- (d) *To direct the respondents to grant the Applicant with the 50% disability element of pension from date of superannuation i.e. 17.07.2022 along with interest @12% per annum till its payment to the applicant.*
- (e) *To direct the respondents to grant the Applicant with the service element of the aforesaid disability pension in terms of Gol, MoD, DESW Policy dated 30.08.2006 from the date of superannuation i.e. 17.07.2022 along with interest @12% per annum till its payment to the Applicant.*
- (f) *Pass any other or such further order or orders as deemed fit to the Hon'ble Tribunal in orders to secure the ends of justice in favour of the Applicant.*

2. Briefly stated, applicant was commissioned in the General Service Engineering Branch Cadre of Indian Navy 18.07.2012 as Short Service Commissioned Officer and retired on 17.07.2022 (AN) in Low Medical Category on completion of his initial terms of engagement. At the time of discharge from service, the Release Medical Board (RMB) held at Visakhapatnam INHS, Kalyani on 29.12.2022 assessed his disability '**BRONCHIAL ASTHMA ICD – J 45.9**' @20% for life and opined the disability to be **Aggravated by** military service. The disability claim of the applicant was however rejected by the Competent Authority vide letter dated 28.06.2022 on the ground that the disability of the applicant was

neither attributable to nor aggravated by military service and constitutional in nature. The applicant preferred First Appeal which too was rejected vide letter dated 07.11.2022. 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 @20% for life. The Competent Authority has no authority to overrule the opinion of the 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 and its rounding off to 50%.

4. Ld. Counsel for the respondents conceded that disability of the applicant @20% for 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 pension as per Regulation 28 of the Navy Pension Regulations, 1964 which provides that *"an officer who is retired from service, on account of a disability which is attributable to or aggravated by such service and which is assessed at twenty percent or over may, on retirement be awarded a disability pension consisting of a service element and a disability element. The rate disability element of a disability pension w.e.f. 01 Jan 2006 is 30%*

*of the reckonable emoluments last drawn for 100% disability and will reduce proportionately with the reduction of disability. No disability element shall be payable for disability/disabilities less than 20% or if the disability has been considered as Neither Attributable to or Aggravated 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 of three folds:-

- (a) Whether the Competent Authority has authority to overrule the opinion of RMB?
- (b) Whether the Short Service Commissioned Officer is entitled for the disability pension?
- (c) 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 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 29.12.2021 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. Further, consequent upon the issue of Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi letter No. 1(9)/2006/D(Pen-C) dated 30.08.2006 and letter No. 16(01)/2012-D(Pen-Pol) dated 23.03.2015, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 23 dated 27.05.2015 wherein it is provided that *“in the case of aggravation too, service element of disability pension in respect of non-regular officers would be calculated after taking into account the full commissioned service rendered by them as calculated in the case of Regular Commissioned Officer. As such EC/SSC officers in aggravation cases would also be allowed the benefit of revision w.e.f. 30.08.2006 as allowed to attributable cases vide MoD letter dated 30.08.2006.”*

10. In view of the Circular No. 23 dated 27.05.2015 issued by the Principal Controller of Defence Accounts (Pension), Prayagraj the applicant is entitled for disability pension which include disability element as well as service element also.

11. 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 10<sup>th</sup> 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."*

12. 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.

13. 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 pension @20% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his retirement.

14. In view of the above, the **Original Application No. 652 of 2023** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of 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 pension @20% 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 pension to the applicant @20% 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.

15. No order as to costs.

16. Ld. Counsel for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated : 15 January, 2024

AKD/Ashok/-