

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 1225 of 2023

Wednesday, this the 10th day of July, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

743971-L Cpl. Amit Srivastava (Retd.), S/o Shri Ashok Kumar Srivastava, R/o 611/90 A/10, Baghambari Gaddi, Allapur, PO – Daraganj, prayagraj, Uttar Pradesh-211006.

..... Applicant

Ld. Counsel for the Applicant : **Shri Mahendra Kumar Singh**, Advocate
Shri Saudabh Kumar, Advocate

Versus

1. Union of India, through Secretary, MoD (IAF), South Block, New Delhi-06.
2. Chief of the Air Staff, Air Headquarters, Vayu Bhawan, New Delhi-110011.
3. Dte of Air Veterans, Air Headquarters, Subroto Park, New Delhi-110010.
4. AOC, 7 BRD Air Force, Air Force Station, Tughlakabad, New Delhi-44.
5. Jt. CDA (Air Force), Subroto Park, New Delhi-110010.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Kaushik Chatterjee** , 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. *to issue/pass an Order or direction of appropriate nature to the respondents to treat the 2nd disability as recorded in the Categorisation Board dated 06.07.2010 as attributable to Military Service and degree of disablement @30% for life.*
- B. *to issue/pass an order or directions of appropriate nature to the respondents to grant disability element of disability pension @30% for life (in terms of Medical Board dated 06.07.2010) to the applicant from the next date of his discharge from service (15.02.2011) and to pay the arrears along with suitable rate of interest as deem fit by this Hon’ble Tribunal.*
- C. *to grant the benefit of rounding off the disability element of disability pension from @30% to @50% from next date of his discharge from service i.e. 15.02.2011 in terms of Govt. of India letter dated 31.01.2001 and Hon’ble Apex Court Judgment in Ram Avtar’s Case and to pay the arrears along with suitable rate of interest as deem fit by this Hon’ble Tribunal.*
- D. *Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. Briefly stated, applicant was initially enrolled in the Indian Air Force 19.12.2001 and was pre-maturely discharged on 14.02.2011 at his own request in Low Medical Category before fulfilling the

conditions of enrolment after rendering 09 years, 01 month and 26 days of service. At the time of discharge from service, the Release Medical Board (RMB) held at 7 BRD, Air Force on 18.02.2011 assessed his disabilities (i) '**BILATERAL RENAL CALCULUS OLD**' @15-19% for life as neither attributable to nor aggravated (NANA) by service and (ii) '**POTT'S SPINE LV1-2 OLD**' @30% for life as **attributable to service**, composite disabilities **30% for life**. However, the applicant has not been granted disability pension. The applicant preferred Appeal-cum-Representation-cum-Legal Notice dated 19.09.2022 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 applicant's at the time of discharge from service applicant's RMB was not done rather respondents have taken signatures from him on some blank papers. However, RMB annexed with the Counter Affidavit shows that the applicant's second disability was found to be **attributable to service** which had also assessed the second disability @30% for life. He further submitted that the applicant has not been granted disability pension which amounts 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% from the next date of his discharge.

4. Ld. Counsel for the respondents conceded that the second disability of the applicant @30% for life has been regarded as

attributable to service by the RMB, but since the applicant was discharged from service at his own request, 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 three folds:-

- (a) Whether the Pension Sanctioning has authority to overrule the opinion of RMB?
- (b) Whether the applicant is entitled to disability pension being a case of discharge on his own request?
- (c) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. We observed that this is a case where the disability of the applicant has been opined as **attributable to service** by the RMB. The RMB assessed the second disability @30% for life. However, the opinion of the RMB has been overruled by the Pension Sanctioning Authority and the applicant has not been granted disability element of disability pension.

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 Pension Sanctioning Authority over ruling the opinion of RMB held on 18.02.2011 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 Pension Sanctioning Authority, hence the decision, if any, of Pension

Sanctioning Authority not granting disability pension, is void. Hence, we are of the opinion that the second disability of the applicant should be considered as attributable to service as has been opined by the RMB.

9. Government of India, Ministry of Defence letter No.16(5)/2008/D(Pen/Policy) dated 29.09.2009 stipulates that *“In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntarily or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity.”* In view of aforesaid letter, the applicant is entitled for grant of disability pension even if he has been discharged on his own request.

10. 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 invalided 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.”

11. 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.

12. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

13. Ld. Counsel for the applicant submitted that he is entitled for the disability element from the date of his discharge because the second disability is attributable to military service since beginning as it is mentioned in RMB.

14. He further submits that medical papers were not given to him at the time of discharge and he obtained it through Right to Information Act in October, 2022. After obtaining medical papers he

could know the report of RMB Proceedings and after that he has filed this Original Application on 04.10.2023.

15. On perusal of record we find that there is signature of applicant on each and every page of RMB proceedings and also no on Civil Employment Certificate dated 18.02.2011 and the allegation of the applicant that his signatures were taken on blank papers is not substantiated by any relevant material. Keeping in view law laid down by the Hon'ble Apex Court in the case of **Shiv Dass (supra)** we are of the view that applicant is entitled for disability element for second disability w.e.f. three years prior to filing of Original Application.

16. As such, in view of the decision of Hon'ble Supreme Court in the cases of **Shiv Dass (supra)** and **Union of India and Ors vs Ram Avtar & ors** 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 for the second disability from three preceding years from the date of filing of the Original Application.

17. In view of the above, the **Original Application No. 1225 of 2023** deserves to be partly allowed, hence **partly allowed**. The order, if any, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. Be it mentioned that the

applicant has not claimed any relief with regard to first disability, hence, need not be adjudicated. The second disability of the applicant is held as **attributable to** Air Force Service as has been opined by RMB. The applicant is entitled to get disability element of disability pension @30% for life which would be rounded off to 50% for life for the second disability w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element of disability pension to the applicant @30% for life which would stand rounded off to 50% for life for the second disability w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 04.10.2023. 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.

18. No order as to costs.

(Lt. Gen. Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 10 July, 2024

AKD/-