

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 736 of 2023

Monday, this the 27th day of May, 2024

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

Service No 625111-T Ex Sgt Ashutosh Tewari, Son of Late Brijendra Nath Tewari, Resident of House No 190, Ganga Nagar Housing Society, Nawabganj, Kanpur – 208002 (U.P.)

..... Applicant

Ld. Counsel for the Applicant : **Shri VP Pandey,
Shri DK Dixit and Shri RK Singh,
Advocates**

Versus

1. Union of India, through the Secretary, Min of Def, New Delhi.
2. The Chief of the Air Staff, Integrated Headquarters, Min of Def (Air), Vayu Sena Bhawan, New Delhi – 110011.
3. The Directorate of Air Veteran, Air Headquarters, Subroto Park, New Delhi – 110010.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj – 211014.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Manu Kumar Srivastava, 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 set aside/quash the rejection order contained as Annexure A-1 to Compilation 1 (01.04.2003).

(b) To pass an order/direction to the Respondents to grant disability element of disability pension wef 01.04.2000 i.e. next date of discharge from service.

(c) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.

(d) Cost of the Original Application be awarded in favour of the applicant.

2. Briefly stated, applicant was initially enrolled in the Indian Air Force on 15.03.1980 and was discharged on 31.03.2000 (AN) on completion of terms of engagement in Low Medical Category after rendering 20 years and 16 days of service. At the time of discharge from service, the Release Medical Board (RMB) held at No 2 Wing, Air Force on 15 June 1999 assessed his disability ‘**Fracture Shaft Femur (Lt) Upper 1/3 RD (Optd) V-7’ @ 30%** for five years and opined the disability to be **Attributable to** military service as injury sustained due to fall from train at New Delhi Railway Station on 15.03.1992, while proceeding on annual leave. The disability claim of the applicant was however rejected by the Deputy Controller of Defence Account (Air Force), New Delhi vide letter dated

01.04.2003 on the ground that the disability of the applicant was not attributable to military service. 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 attributable to military service vide RMB which had also assessed the disability @30% for five years. He further pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Air Force. The applicant sustained injury due to fall from train at New Delhi Rly Station on 15.03.1992 while proceeding on annual leave, which has causal connection with military service and which has been opined as attributable to military service vide Injury Report dated 15.12.1992 and also by the RMB. He further submitted that Dy Controller of Defence Accounts (Air Force), New Delhi 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 five years has been regarded as Attributable to Military service by the RMB, but pension sanctioning authority i.e. Dy Controller of Defence Accounts (Air Force), New Delhi has rejected the claim of the applicant on the ground that the

disability of the applicant is not attributable to military service, hence as per Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I) which provides that *“Unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over”* the 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 two folds:-

- (a) Whether the Dy Controller of Defence Accounts (Air Force), New Delhi 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 attributable to military service by the RMB. The RMB assessed the disability @30% for five years. However, the opinion of the RMB has been overruled by Dy Controller of Defence Accounts (Air Force), New Delhi and the disability has been regarded as not attributable to 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. Dy Controller of Defence Accounts (Air Force), New Delhi over ruling the opinion of RMB held on 15.06.1999 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 Dy Controller of Defence Accounts (Air Force), New Delhi, hence the decision of Dy Controller of Defence Accounts (Air Force), New Delhi is void. Hence, we are of the opinion that the disability of the applicant should be considered as attributable to 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 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."*

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 five years to be rounded off to 50% for five years may be extended to the applicant from the next date of his discharge.

12. Since the applicant's RMB was valid for five years w.e.f. 31.03.2000, hence, the respondents will now have to conduct a fresh Re-Survey Medical Board for him to decide his future eligibility to disability element of disability pension.

13. In view of the above, the **Original Application No. 736 of 2023** deserves to be partly allowed, hence **partly allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The disability of the applicant is held as attributable to Military Service as has been opined by RMB. The applicant is entitled to get disability element @30% for five years which would be rounded off to 50% for five years from the next date of his discharge. The respondents are directed to grant disability element to the applicant @30% for five years which would stand rounded off to 50% for five 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 element of disability pension. 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.

14. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 27 May, 2024

Ukt/-