

(E. Court)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 220 of 2022

Thursday, this the 22nd day of September, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 2863536Y Ex. Nk. Laujhar Ram, S/o Late Barsati Ram,
Resident of Village – Harrur, Post- Zamana, District-Ghazipur
(U.P).

..... Applicant

Ld. Counsel for the : **Shri R. Chandra**, Advocate.
Applicant

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ Post Office-New Delhi-11.
3. The Officer –In-Charge, Records RAJRIF Pin -900106, C/o 56 APO.
4. The Chief Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad-14 (U.P).

.....Respondents

Ld. Counsel for the : **Shri Adesh Kumar Gupta**, Advocate
Respondents. 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:-

- (I) *The Hon’ble Tribunal may be pleased to set aside the orders dated 18.08.1990 (Annexure A-1).*
- (II) *The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01.04.1990 along with its arrears and interest thereon at the rate of 18% per annum.*
- (III) *Hon’ble Tribunal may be pleased further to grant benefit of rounding of disability pension @50 Percent in terms of Ram Avtar’s Case.*
- (IV) *Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Indian Army on 17.04.1970 and discharged on 31.03.1990 in medical category lower than ‘AYE’ and not upto the prescribed military physical standard after rendering 19 years, 10 months and 27 days of service under Rule 13 (3) Item III (v) of the Army Rules, 1954. At the time of retirement from service, the Release Medical Board (RMB) held at No. 7 Air Force Hospital C/o 56 APO on 29.09.1989 assessed his disability ‘**ECG ABNORMALITY**’ @ 30% for two years but 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 05.05.1990 on the ground that the disability of the applicant was neither attributable to nor aggravated by military service and it existed before and has remained aggravated there by which was communicated to the applicant vide letter dated 28.08.1990. The applicant preferred application dated 25.06.2020 under Right to Information Act which was replied by the respondents vide letter dated 19.08.2020. 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 two years. He further submitted that Principal Controller of Defence Accounts (Pension), Allahabad 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 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 as per Regulation 173 of the Pension Regulations for the Army, 1961 (Part – I) 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 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 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 two year. 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 Principal Controller of Defence Accounts (Pensions), Allahabad over ruling the opinion of RMB held on 29.09.1989 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 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 31.03.1990.

10. Since the applicant's RMB was valid for two years w.e.f. 31.03.1990, 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.

11. In view of the above, the **Original Application No. 220 of 2022** 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 Military Service as has been opined by RMB. The applicant is entitled to get disability element @30% for two years from the next date of his discharge. The respondents are

directed to grant disability element to the applicant @30% 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 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.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 22 September, 2022

AKD/-