

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI**  
**(SI. No. 29)**

**O.A. No. 52 of 2019 with M.A. No. 35 of 2019**

**Ex. Nk. (TS) Tinkho Lal** Applicant  
By Legal Practitioner for the Applicant : Shri A.R. Tahbildar, Advocate

**Versus**

**Union of India & Others** Respondents  
By Legal Practitioner for Respondents : Shri P.K. Garodia, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><b><u>06.04.2023</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Air Marshal Balakrishnan Suresh, Member (A)</u></b></p> <p><b><u>M.A. No. 35 of 2019</u></b></p> <p>Heard Shri A.R. Tahbildar, Ld. Counsel for the applicant and Shri P.K. Garodia, Ld. Counsel for the respondents.</p> <p>This application has been filed for condoning delay of 19 years 01 day in filing Original Application for the grant of disability pension to the applicant.</p> <p>It is submitted by the Ld. Counsel for the applicant that delay in filing the Original Application is not intentional, but for the reasons stated in the affidavit filed in support of delay condonation application.</p> <p>The Ld. Counsel for the respondents has vehemently opposed the prayer.</p> <p>Upon hearing submissions of Ld. Counsel of both sides we find that cause shown is sufficient. Accordingly, delay is <b>condoned</b>. Delay condonation application stands disposed of.</p> <p><b><u>O.A. No. 52 of 2019</u></b></p> <p>Heard Shri A.R. Tahbildar, Ld. Counsel for the applicant and Shri P.K. Garodia, Ld. Counsel for the respondents.</p> <p>Original Application is <b>allowed</b>.</p> <p>For orders, see our order passed on separate sheets.</p> <p>Misc. Application(s), pending if any, shall be treated to have been disposed of.</p> <p style="text-align: center;"><b>(Air Marshal Balakrishnan Suresh)</b> <span style="float: right;"><b>(Justice Umesh Chandra Srivastava)</b></span> <b>Member (A)</b> <span style="float: right;"><b>Member (J)</b></span></p> <p>AKD/MC/-</p>

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI****ORIGINAL APPLICATION No. 52 of 2019**

Thursday, this the 06<sup>th</sup> day of April, 2023

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Air Marshal Balakrishnan Suresh, Member(A)”**

**No. 13676399 Ex. Nk (TS) Tinkho Lal**

**..... Applicant**

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

Versus

1. Union of India,

**.....Respondents**

Ld. Counsel for the Respondents. : **Shri P.K. Garodia**, 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 :-

- (i) *Quash and set aside the impugned orders dated 12.06.1996 and 09.03.2000 passed by*

*the PCDA(P) Allahabad discontinuing payment of disability element of disability pension to the applicant and the letter dated 12.07.2019 issued by the Records, Brigade of the Guards rejecting the first appeal against rejection of disability element of disability pension on the grounds of being time barred.*

- (ii) *Direct the authorities to continue to pay the disability element of disability pension to the applicant with arrear since 05.05.1995 and rounding off benefit w.e.f. 01.01.1996 and interest thereof and/or pass such further order(s) as deem fit and proper.*

2. Briefly stated, applicant was initially enrolled in the Brigade of Guard of Indian Army 31.12.1977 and was discharged on 31.12.1992 in Low Medical Category under Rule 13 (3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at 92 Base Hospital on 05.05.1992 assessed his disability '**FRACTURE LOWER 1/3 SHAFT (RT) ULNA(LT) CLAVICLE**' @20% for five years and opined the disability to be **Aggravated by** military service. Accordingly, the applicant was granted disability element of disability pension from 01.01.1993 to 04.05.1995.

The Re-Survey Medical Board (RSMB) held on 29.01.1996 which assessed the applicant's disability @20% for five years with effect from 05.05.1995. The disability claim of the applicant was however rejected by the Principal Controller of Defence Account (Pensions), Allahabad vide letter dated 12.06.1996 and reduced the applicant's disability less than 20% for five years which was communicated to the applicant vide letter dated 03.07.1996. The RSMB held on 01.01.2000 again assessed the applicant's disability @20% for life but the Principal Controller of Defence Accounts (Pension), Prayagraj was again reduced the applicant's disability less than 20% for five years from 29.01.2001 to 31.12.2004 vide letter dated 12.03.2000 which was communicated to the applicant vide letter dated 22.04.2000. The applicant preferred First Appeal which too was rejected vide letter dated 12.07.2019. 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 @20% for two years. The RSMB held 01.01.2000 assessed the applicant's

disability @20% for life. 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 **attributable to military service** the RMB and accordingly, he was granted disability pension. The RSMB held on 01.01.2000 assessed the applicants disability @20% for life, but pension sanctioning authority i.e. Principal Controller of Defence Accounts (Pensions), Allahabad has rejected the claim of the applicant and reduced the applicant disability less than 20%, 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 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 @20% for two years. Accordingly, the applicant was granted disability pension. The RSMB held on 29.01.1996 and 01.01.2000 assessed the applicant's disability @20%. However, the opinion of the RMB has been overruled by Principal Controller of Defence Accounts (Pensions), Allahabad and the degree of disability has been reduced less than 20%.

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 RsMB held 29.01.1996 and 01.01.2000 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 RSMB 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 @20% for life as has been opined by the RSMB held on 01.01.2000.

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 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 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(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.

11. 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."*

12. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (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 element of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

13. In view of the above, the **Original Application No. 52 of 2019** 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 @20% for life as has been assessed by the RSMB held on 01.01.2000. The applicant is entitled to get disability element @20% for life which would be rounded off to 50% for life with effect from three preceding years from the date

of filing of the Original Application. The respondents are directed to grant disability element to the applicant @20% for life which would stand rounded off to 50% for life with effect from three preceding years from the date of filing of the Original Application. The date of filing of the Original Application is 23.10.2019. 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.

**(Air Marshal Balakrishnan Suresh) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated : 06 April, 2023

AKD/Kaila/--