

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

21. O.A. No. 31 of 2018

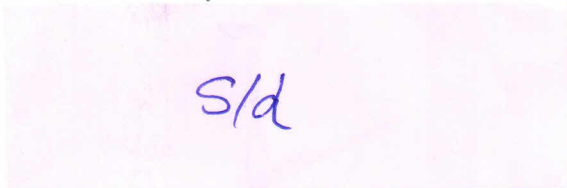
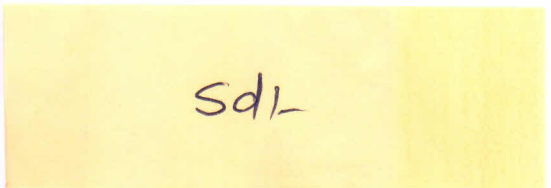
Ex Rect Ankush Appa Bhosale  
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others  
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>06.06.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Heard Shri S.K. Chinchalikar, Ld. Counsel for the applicant and Shri K.P.M. Nair, 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), if any, pending for disposal shall be treated to have been disposed of.</p> <div style="display: flex; justify-content: space-around; align-items: center;"><div style="text-align: center;"> (Vice Admiral <del>Abhay</del> Raghunath Karve) Member (A)</div><div style="text-align: center;"> (Justice Umesh Chandra Srivastava) Member (J)</div></div> <p>SB/AMK</p>

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI**

**ORIGINAL APPLICATION No. 31 of 2018**

Monday, this the 6<sup>th</sup> day of June, 2022

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

Ankush Appa Bhosale  
 No.2773519L(Ex Rect)  
 R/o. Village & Post Agran Dhulgaon,  
 Tehsil-Kavathe Mahankal,  
 Dist.- Sangli (Maharashtra State) .. Applicant

By Legal Practitioner – **Mr. S. K. Chinchalikar** for the Applicant

**Versus**

1. Union of India  
 Ministry of Defence  
 Through its Secretary,  
 New Delhi.
2. Chief of Army Staff  
 Army Headquarters,  
 D.H.Q.P.O., New Delhi-110110.
3. The OIC Records  
 The Marathi LI,  
 Belgaum-900499.
4. The Principal Controller of  
 Defence Accounts (Pension),  
 Allahabad (UP) .. Respondents

By Legal Practitioner – **Mr.K.P.M. Nair**, Sr. Panel Counsel for the Respondents

**ORDER**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (a) *This Hon'ble Court be pleased to order directing the Respondents to grant Disability pension under the Rules of the Pension Regulation of the Army 1961 (Part-I).*
- (b) *This Hon'ble Court be pleased to set aside the impugned order dated 16<sup>th</sup> Sep., 2017 passed by respondent No.3.*
- (c) *Cost of this appeal be granted;*
- (d) *Such other and equitable order as the circumstances of the case may be granted."*

sdL

sdL

2. Briefly stated, applicant was enrolled in Indian Army on 14.03.1980 and was invalided out from Army service on 04.01.1981. The applicant states that while undergoing advance training during the Riffle Banat Fighting his right knee was fractured. Immediately he was admitted in M.H. Belgaum for treatment and further he was transferred to M. H. Panaji and subsequently his medical category was downgraded to Low Medical Category EEE (Permanent). Thereafter IMB was held at M. H. Belgaum and he was assessed with 20% disability for two years and was invalided out out from service w.e.f. 04.01.1981. During invaliding medical board the said disability was considered as attributable to military service. The initial claim of disability was rejected by the Principal Controller of Defence Accounts (Pensions), Allahabad on 05.07.1981. The applicant issued legal notice on 10.02.2016 but the disability pension has not been granted vide letter dated 24.02.2016. The applicant's First Appeal was also rejected vide order dated 16.09.2017. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disability of the applicant was contracted during training, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof. The applicant is therefore entitled to disability pension and its rounding off to 50%.

Sd/-

Sd/-



4. On the other hand, Ld. Counsel for the respondents conceded that disability of the applicant i.e. right knee fracture has been regarded as 20% for two years by IMB. The medical report states that the injury sustained in June 1980 was during physical training due to a fall. The applicant was recommended to be invalided out of service by the IMB. However, PCDA (P) Allahabad opined that disability of the applicant is neither attributable to nor aggravated by military service. He pleaded for dismissal of the O.A.

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 IMB/RMB?

(b) 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 attributable to military service by the IMB. The IMB assessed the disability @20% for two years. However, the opinion of the IMB 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 Invaliding 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

Sd/-

Sd/-

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 overruling the opinion of RMB held on 27.01.1999 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 IMB 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 attributable to military service as has been opined by the IMB.

Sd/-

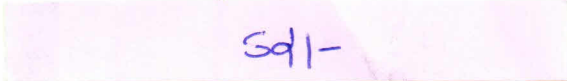
Sd/-



9. Since the applicant's IMB was valid for two years, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension.

10. In view of the above, the Original Application No.31 of 2018 deserves to be allowed, hence, allowed. The impugned order dated 16.09.2017 is set aside. The disability of the applicant is held as aggravated by military service. The applicant is entitled to get disability pension @20% for two years from the next date of discharge of the applicant. The respondents are directed to grant disability pension @ 20% for two years to the applicant from the next date of discharge of the applicant. The respondents are also directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum from the date of this order till the date of actual payment.

No order as to costs.

  
(Vice Admiral Abhay Raghunath Karve)  
Member (A)

  
(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 6<sup>th</sup> June, 2022

SB/AMK