

JL

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 588 of 2010

Monday this the 29th day of November, 2010

“Hon’ble Mr. Justice Janardan Sahai, Member (J)
Hon’ble Lt. Gen. P.R. Gangadharan, Member (A)”

Basu Dev,
S/o Sri Jamadar Singh,
r/o Gram Nagla Dhani, P.O. Lodhpur,
District Farrukhabad

By Legal Practitioner Shri Amit Bose,
Advocate.

Applicant

Versus

1. The Union of India through Secretary,
Ministry of Defence, D.H.Q Post Office,
New Delhi
2. The Officer Incharge, Signal Record,
Lucknow, U.P.
3. The Chief Controller of
Defence Accounts(Pensions),
Allahabad

Respondents

By Legal Practitioner Shri K.D.Nag, Sr.Standing Counsel For the Central
Government.

ORDER

“Hon’ble Mr. Justice Janardan Sahai”

1. The petitioner was enrolled in the Indian Army on 01.02.1985. According to the petitioner in the year 1989 he was declared to be suffering from Pulmonary Tuberculosis and Abdominal Tuberculosis and was admitted in the hospital from 25.10.1991 to 6.12.1991. He was discharged on 30.10.1991 on the basis of the recommendation of the Medical Board which found the petitioner's disability to be 50% for Pulmonary Tuberculosis and 50% for Abdominal Tuberculosis, composite disability 100%. He was granted disability Pension for a period up to 19.09.1992. It appears that Re-survey Medical Board was later on held on 07.01.1993 in which disability was reduced to composite percentage of 30% for the period 20.09.1992 to 28.1.1998 but the petitioner preferred an appeal against the assessment of disability at 30 % and on the basis of the medical opinion available to the Controller of Defence Accounts, the percentage of disability was raised to 60% for the same period. A second Re-Survey Medical Board was held on 23.09.1997 and this time the petitioner's disability was assessed less than 20%. The petitioner filed an appeal and was informed by the Chief Controller of Defence Accounts by letter dated 17.11.1997 that his appeal has been rejected by the Government of India. The petitioner filed Writ Petition No. 15824 of 2004 in the Allahabad High Court in which the petitioner has prayed for quashing the order dated 12.07.2003 passed by Maj.OIC Pension Group and has prayed for a direction to the respondents to pay ^{disability pension} ~~disability~~ to the petitioner from

30.10.1991. A mandamus has also been sought directing the respondents not to interfere with the earlier accepted pension. A counter affidavit was filed in the writ petition and the petitioner filed rejoinder affidavit. The papers of the petition were transferred to the Tribunal in view of the provisions of section 34 of the Armed Forces Tribunal Act, 2007.

2. We have heard Sri R.Chandra, learned counsel for the applicant and Sri K.D.Nag, Sr.Standing Counsel on behalf of the respondents.

3. Sri R.Chandra drew our attention to para 9 of the counter affidavit, in which the respondents have stated that Government of India has issued an order dated 07.02.01 that there will be only one review of percentage of disability and the said review will operate for life unless individual himself asks for a review. It is submitted by the learned counsel for the applicant that on the basis of the letter ~~dated~~ ^{dated} 07.2.2001, the applicant was brought before the Re-survey Medical Board on 27.04.2002 and the Re-survey Medical Board found disability of the applicant between 6% to 10% for life. The submission of the learned counsel for the applicant is that the opinion of the Re-survey Medical Board is erroneous and that the applicant is still under treatment. He placed reliance upon Annexure-13 to

the petitioner which is a copy of the report of the Radiologist of K.K.Hospital, Bareilly, which indicates that the applicant was examined on 21.08.2003 and X-Ray of the chest was performed.

4. There is nothing in the report to indicate that the assessment of disability made by the Re-survey Medical Board is erroneous. The applicant has not filed any paper to indicate that the disability of the applicant was 20% or more. In view of the aforesaid facts, we are of the opinion that there is no ground for interference, ^{as} ~~as~~ It has been held by the Apex Court in *Union of India Vs Dhir Singh China 2003(2) SCR 408; Union of India Vs Surinder Singh Rathor MILLJ 2008 SC 122 Union of India Vs Keshar Singh 2007 5SCR 408* that the opinion of the Medical Board is entitled to great weight and has ordinarily to be accepted.

5. Sri R.Chandra, learned counsel for the applicant submitted that although, as stated in the counter affidavit, on the basis of the Government of India letter dated 07.02.2001 the assessment made by the Review Medical Board regarding disability would be for the life but the said letter also provides that the applicant can apply for review. Sri R.Chandra submits that a direction be issued to the respondents to constitute Re-survey Medical Board to assess the disability of the applicant afresh. Sri K.D.Nag, learned counsel for the respondents raised an objection to this request and he

submits that there is nothing to indicate that the applicant has applied for review of the disability but he submits that in case such an application is made, the respondents would consider the same and the applicant would be re-assessed by the Review Medical Board.

6. In the circumstances, we dispose of the petition with the direction that in case the applicant applies for review of the percentage of the disability, he would be brought before the Medical Board without delay and in case the Medical Board finds the disability of the petitioner at 20% or more he would be entitled to payment of disability pension.

7. Subject to the direction given above, the petition is dismissed.

(Lt. Gen. ~~V.R. Gangadharan~~)
Member (A)

(Justice Janardan Sahai)
Member (J)