

RESERVED
Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 532 of 2018

Tuesday, this the 2nd day of April, 2019

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

No. 14233892-W Ex Hav Bhola Nath
S/o Shiv Shankar
R/o Kalli Pashchim
Mohanlal Ganj
Lucknow UP - 227305

.....Applicant

Ld. Counsel for : **Shri Parijaat Belaura,**
the Applicant **Advocate**

Versus

1. Union of India, through Secretary,
Ministry of Defence,
New Delhi.
2. Chief of Army Staff,
Integrated Headquarters,
Ministry of Defence,
South Block, New Delhi.
3. Officer-in-charge,
The Records Signals,
PIN – 908770,
C/o 56 APO.
4. The Principal Controller of Defence Account (Pension),
Draupadi Ghat,
Allahabad (UP).

.....Respondents

Ld. Counsel for the : **Shri A.K. Sahu,**
Respondents **Ld. Counsel for Central Govt.**

ORDER

“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”

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

- “(I) To grant disability pension @ 30% w.e.f. date of discharge of applicant i.e. 31.08.1995.*
- “(II) To round off the disability pension from 30% to 50% as per GOI, MoD letter 31.01.2001 w.e.f. 01.01.1996.*
- “(III) To pay arrear of difference of disability pension along with 12% interest from the date of his release i.e. 01.09.1995 till it is actually paid.*
- “(IV) Any other suitable relief this Hon’ble Court deems fit and proper may also be granted.”*

2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Indian Army on 09.02.1980 in medically fit condition and discharged from service on 31.08.1995 in low medical category CEE (Permanent) under Army Rule 13(3) Item (v) after serving 15 years and 204 days of service. The Release Medical Board (RMB) held before retirement, considered the disability “**IHD-413 ANGINA PEETORIS**” as aggravated by military service and assessed it @ 30% for two years. The claim of the applicant for grant of disability pension was rejected by PCDA (P) Allahabad by over ruling the opinion of RMB vide letter dated 17.04.1996. The applicant has not preferred any appeal in stipulated time against the rejection of his disability claim. However, the applicant preferred a personal application dated Nil, received by the respondents on 06.09.2017 which was suitably replied denying the

disability pension. Aggrieved by denial of disability pension, the applicant has preferred this O.A.

3. Learned counsel for the applicant submitted that since the applicant's disability "**IHD-413 ANGINA PEETORIS**" @ 30% for two years has been considered by RMB, as aggravated by military service, hence, over ruling of RMB opinion by PCDA (P) Allahabad is wrong and he should be granted disability pension @ 30% for two years which should be rounded off to 50% for two years w.e.f. 01.01.1996 in terms of Government letter dated 31.01.2001.

4. Learned counsel for the respondents have not disputed that RMB conceded the disability of the applicant as aggravated by military service @ 30% for two years. They, however, submitted that PCDA (P) Allahabad in consultation with Medical Advisor (Pensions) rejected the disability of the applicant as "neither attributable to nor aggravated by military service" (NANA) vide their letter dated 17.04.1996. He further submitted that the applicant is in receipt of service pension and that under the provisions of Rule 173 of Pension Regulations for the Army 1961 (Part-I), primary condition for grant of disability pension is that "Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over". He concluded that since, disability of the applicant has been rejected by PCDA (P) Allahabad as "neither attributable to nor aggravated by military

service”, hence, the applicant is not eligible for grant of disability pension.

5. We have heard learned counsel for the parties and perused the record.

6. It is clear that in the instant case the PCDA (P) Allahabad has overruled the opinion of the RMB and declared the disability of the applicant i.e. **“IHD-413 ANGINA PEETORIS”** as neither attributable to nor aggravated by military service. The issue of sanctity of the opinion of a medical board and its overruling by a higher formation is no more Res Integra. The Hon’ble Supreme Court has made it clear that without physical medical examination of the patient, a higher formation cannot overrule the opinion of a medical board. 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.”

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* in Civil Appeal No 104 of 1993 decided on 14.01.1993, we are of the considered opinion that the decision of PCDA (P) Allahabad in over ruling the opinion of RMB is void in law.

Hence, we uphold the opinion of RMB and the disability of the applicant “**IHD-413 ANGINA PEETORIS**” is considered as aggravated to military service.

7. Since the medical board has assessed the disability as 30% for two years, as such keeping in view the judgment of *Veer Pal Singh vs Ministry of Defence*, reported in (2013) 8 SCC 83, we feel that the case of the applicant should be recommended for Re-survey Medical Board to reassess further entitlement of disability element, if any.

8. In view of the above, the Original Application deserves to be partly allowed.

9. Accordingly the O.A. is **partly allowed**. The impugned orders passed by the respondents are set aside. The applicant is eligible for grant of disability element @ 30% for two years from the date of his discharge i.e. 01.09.1995. However, due to law of limitations, the applicant will not be entitled to arrears of disability element and also its rounding off during the two years period after discharge. The applicant is already in receipt of service element since his discharge. The respondents are further directed to conduct a Re-survey Medical

Board for the applicant so as to decide his further entitlement to disability element. The respondents are required to give effect to this order within a period of four months from the date of receipt of a certified copy of this order.

10. No order as to cost.

(Air Marshall BBP Sinha)
Member (A)

Dated: April, 2019
SB

(Justice SVS Rathore)
Member (J)