

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 431 of 2018

Wednesday, this the 3rd day of April, 2019

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

JC-255142F Sub Shyam Narain Singh (Retd), S/O Shri Sobh Nath Singh Yadav, R/o 592 (GHA)/561 Rajiv Nagar (Ghosiyana) Post – Kharika (Telibagh), Dist – Lucknow (U.P.)- 226002.

..... Applicant

Ld. Counsel for the : **Shri Shailendra Kumar Singh,**
Applicant Advocate

Versus

1. Union of India through Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block III, New Delhi – 110011.
3. OIC Records, Army Air Defence Records, PIN – 908803, C/O 99 APO.
4. Principal Controller of Defence Accounts (Pensions), (Army), Draupadi Ghat, Allahabad UP) 211014.

.....**Respondents**

Ld. Counsel for the : **Dr. SN Pandey**
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

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

- “(A). To quash the impugned order dated 13.10.2017 (A-1 of Instant OA) wherein claim of the applicant has been denied and returned unactioned for grant of disability pension arbitrarily.*
- (B). To issue suitable orders or directions to the Respondents to grant disability pension to the applicant with effect from 01.02.2002 (date of discharge) in terms of Hon’ble Apex Court Judgments (Dharamveer Singh, Sukhvinder Singh).*
- (C). To issue suitable orders or directions to the Respondents for grant of rounding off benefit of his disability element with effect from 01.02.2002 (date of discharge) in terms of Govt of India letter dated 31 Jan 2001 along with Hon’ble Apex Court Judgment (UOI & Others Vs Ram Avtar).*
- (D). To pay the arrears of said difference of disability element and rounding off benefits along with suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.*
- (E). Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. Briefly stated facts of the case are that the applicant was enrolled in the Army on 26.01.1974 and was discharged from

service on 01.02.2002 in Low Medical Category after rendering more than 28 years of service. At the time of discharge from service, the Release Medical Board (RMB) assessed his disability '**Inferior & Post Wall Myocardial Infarction (old)-410**' as aggravated by military service @ 40% for two years. His claim for grant of disability pension was rejected by respondents vide letter dated 06.08.2002. The applicant preferred First Appeal against the rejection of disability pension claim which was also rejected vide order dated 13.10.2017. Being aggrieved, the applicant has approached this Tribunal for grant of disability pension by means of 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. He further submitted that the RMB has opined his disability to be aggravated by Military service hence the denial of disability pension to the applicant is wrong. He pleaded for grant of disability pension to the applicant and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant has been conceded as aggravated @ 40% for two years by RMB. Paragraph 173 of Pension Regulations 1961 (Part-1) clearly states that pension may be granted to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by

military service and percentage of disablement is assessed as 20% or above. Since his disability was considered as not attributable to military service by a higher authority i.e. PCDA (P), Allahabad, hence his claim for grant of disability pension has correctly been rejected.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents and perused the Release Medical Board.

6. This is a case where the RMB had conceded the disease of the applicant as aggravated by military service @ 40% for two years. However, PCDA (P), Allahabad has overruled the opinion of RMB and declared the disease as NANA. Hence the respondents have not granted the disability pension claim of applicant on the ground that disability was not attributable to military service.

7. The supremacy of the opinion of a Medical Board is no more *res integra*. It is clear that Medical Advisor at PCDA (Pension), Allahabad has rejected the claim of disability pension of the applicant without carrying out any physical examination of the applicant. The Hon'ble Apex Court has made it very clear that the opinion of the Medical Board cannot be overruled by a higher chain of command without physical medical examination of the patient. This matter has already been settled by the Hon'ble Supreme Court in the case of ***Ex. Sapper Mohinder Singh vs. Union of***

India in Civil Appeal No 104 of 1993 decided on 14.01.1993.

Relevant part of judgment is as follows:-

“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 considering all issues we are of the opinion that the decision of PCDA (P), Allahabad in overruling the opinion of RMB is void in law and is set aside. We agree with the opinion of RMB hence the disability of the applicant is to be considered aggravated by military service.

9. Since the medical board has assessed the composite disability as 40% 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.

10. Thus we are of the considered opinion that the applicant is entitled to disability pension @ 40% for two years from the date of his discharge i.e. 01.02.2002 and his further entitlement to disability pension shall be subject to the outcome of a fresh Re-Survey Medical Board. However due to law of limitation, the applicant will not be entitled to any arrears of disability element.

11. In view of the above, the **Original Application No. 431 of 2018** deserves to be allowed, hence, **allowed**. The impugned orders passed by the respondents are set aside. The disability of the applicant '**Inferior & Post Wall Myocardial Infarction (old)-410**' @ 40% for two years is considered as aggravated by military service with effect from the date of discharge i.e. 01.02.2002. However due to law of limitations the applicant will not be entitled to any arrears of his disability element. Respondents are further directed to conduct a Re-Survey Medical Board of the applicant to assess his future entitlement of disability element. The order is required to be implemented within four months of receiving a certified copy of this order.

No order as to costs.

(Air Marshal B.B.P. Sinha)
Member (A)

Dated: April, 2019

UKT/

(Justice S.V.S. Rathore)
Member (J)