

RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
COURT NO. 1

O.A. No. 80 of 2014**Wednesday, this the 23rd day of December, 2015****“Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member
Hon’ble Lt Gen Gyan Bhushan, Administrative Member”****No. 4170261 Ex-Hav. Clk. Gopal Krishan, son of Late Dewaki
Nandan, Resident of Village-Mitari Gaon Post-Dungari
(Kanalichhina) Teh-Didihat Distt- Pithoragarh (Uttarakhand).****.....Applicant**

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Under-Secretary, Government of India, Ministry of Defence, DHQ, New Delhi.
3. Addl Dte Gen of Personnel Services Adjutant General’s Branch Integrated HQ of MoD (Army) DHQ PO: New Delhi-110011.
4. The Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad (U.P).
5. Officer in Charge, Sikh Regiment, Abhilekh Karyalay Records the Sikh Regiment Ramgarh Cantt Jharkhand-829131.

....Respondents**Ld. Counsel appeared for the Applicant -Shri Parijaat Belaura,
Advocate****Ld. Counsel appeared for the Respondent -Shri Dileep Singh
Central Government
Counsel**

ORDER**"Per Hon'ble Mr. Justice Virendra Kumar DIXIT, Judicial Member"**

1. Present Original Application has been filed on behalf of the Applicant under Section 14 of the Armed Forces Tribunal Act, 2007, and he has claimed the following reliefs-

"(I) To quash the order dated 29.02.2012 (Annexure no 1) passed by Opposite Party no.2 and order dated 17.01.2013 (Annexure No. 2) passed by Opposite Party No.5.

(II) To issue order or direction to Opposite party No.4 to calculate the disability pension @ 75% as his disability was assessed @50% by the Medical Board held on 10.05.1997.

(III) To set aside the opinion of Re-Survey Medical Board held on 22.07.1999 and calculate the disability pension @ 75% (from 22.07.1999 to 18.08.2006) as Board held on 22.07.1999 was of the view that disability of the Applicant has increased since last Medical Board but wrongly assessed the disability of Applicant @30%.

(IV) To set aside the opinion of Medical Board dated 18.8.2006 which has assessed the disability of Applicant @ 30% only despite of opinion that disability of Applicant continuously aggravated and direct the Opposite Party no. 4 to calculate the disability pension @ 75% and pay the Applicants.

(V) To direct the Opposite Parties to hold again review Medical Board considering the fact that at every Medical Board disability of Applicant has increased.

(VI) To direct the Opposite Party no.4 to pay the arrears of disability pension alongwith 15% interest within some stipulated time and allow the original application with special cost.

(VII) Any other relief as considered by this Hon'ble Tribunal be awarded in favor of the Applicant."

2. The facts of the case are that the Applicant was enrolled in the Army on 02.09.1977 and was discharged on 30.09.1992 under Army Rule 13 (3) item III (v) in low medical category due to disease 'Low Backache'. Before discharge, he was examined by the Medical Board held on 11.05.1992, which quantified his disability at 50% for two years, and considered his disability as not attributable to Military service but it was considered to be aggravated by Military service owing to stress and strain of service. The disability pension claim was forwarded to PCDA (Pension) Allahabad which sanctioned his disability pension at 50% for five years with effect from 01 Oct 1992 to 10 May 1997. On 10 May 1997, the Applicant was again examined by the Re-survey Medical Board which quantified his disability at 50% (Permanent) but the PCDA (Pension) Allahabad, in its discretion, lowered down the disability pension to 20% for two years with effect from 11 May 1997 to 09 May 1999. The Applicant was again examined on 22.07.1999 by the Re-survey Medical Board, which quantified his disability at 30% for five years but PCDA (Pension) Allahabad altered the disability to 20% for five years from 10 May 1999 to 21 Jul 2004. The Applicant then preferred an appeal against the reduction of his disability by the PCDA (P) Allahabad, which it would appear, was rejected by means of communication dated 17.01.2013. The Applicant was again examined by Re-survey Medical Board on 14.01.2005 and this time his disability was quantified at 20% for life. In the meantime DGAFMS vide their letter dated 21 Jun 2005 accorded sanction for holding Review Medical Board at Army Hospital (R&R). The Review Medical Board was held and the disability was accorded at 30% for life with effect from 18 Aug 2008. The disability pension for the interim period from 14 Jan 2005 to 17 Aug 2006 for

20% was also granted to the applicant. The benefit of rounding off of disability element from the disability pension from 30% to 50% was also accorded with effect from 01 Jul 2009 for life vide GOI, MOD letter dated 19 Jan 2010.

3. We have heard learned counsel for the Applicant as also learned counsel appearing for the respondents at considerable length. We have also been taken through the materials on record.

4. The submission of the learned counsel substantially is that at the time of discharge, the Invaliding Medical Board had examined the Applicant and had quantified his disability at 50% for two years and considered his disability as not attributable to Military service but it was considered to be aggravated by Military service owing to stress and strain of service. The claim for disability pension was forwarded to PCDA (Pension) Allahabad which after consideration sanctioned his disability pension at 50% for five years with effect from 01 Oct 1992 to 10 May 1997. On 10 May 1997, the Applicant was again examined by the Re-survey Medical Board which quantified his disability at 50% (permanent) but the PCDA (Pension) Allahabad, in its discretion, lowered down the disability pension to 20% for two years with effect from 11 May 1997 to 09 May 1999. The Applicant was again examined on 22.07.1999 by the Re-survey Medical Board, which quantified his disability at 30% for five years but PCDA (Pension) Allahabad altered the disability to 20% for five years from 10 May 1999 to 21 Jul 2004. The Applicant then preferred an appeal against the reduction of his disability by the PCDA (P) Allahabad which it would appear was rejected by means of communication dated 17.01.2013. The Applicant was again examined by Re-survey Medical Board on 14.01.2005 and this time his disability was quantified at 20% for life. The Applicant

was again examined by the Re-survey Medical Board on 18.8.2006 which quantifying his disability at 30% for life.

5. Ld. Counsel for the applicant further submitted that the applicant was granted disability pension @ 50% at the time of discharge which was altered time and again by various Medical Boards and PCDA (Pension) Allahabad yet the condition of the applicant had not improved and it deteriorated day by day. He submitted that his disability pension should be rounded off to 75% from 50% for life from 01.01.1996 onwards as per Govt of India, Ministry of Defence letter dated 31.01.2001.

6. **Per contra**, Learned Counsel appearing for Union of India, to begin with, referred to Regulation 173 of Pension Regulations for the Army, 1961 (Part-1), which envisaged that *"unless otherwise specifically provided, a disability pension consisting of service element and disability element may be granted to an applicant who is invalided out of service on account of a disability which is attributable to or aggravated by Military service in non-battle casualty and it is assessed at 20% or over"*. In reply to oral submissions that the PCDA (P) Allahabad, in the teeth of Medical opinion that the disability of the Applicant though was not attributable to but was opined to be aggravated by the Military service, it was contended that the Medical Advisor (Pensions) attached to PCDA (Pensions) Allahabad as specified under Rule 173 of the Pension Regulations for the Army-1961 (Part -I) rendered the expert medical opinion and reduced the disability to 20%. Learned Counsel for the Respondents propped up the orders of the PCDA (P) Allahabad submitting that the Medical Officer attached with PCDA (P) Allahabad was empowered to review the decision of the Resurvey Medical Board attended with submission that the institution

of M.A (P) in PCDA (P) was abolished since 2004. On the question of rounding off of disability element, it is contended that the benefit of rounding off of disability element from 30% to 50% was notified with effect from 01.07.2009 for life in terms of letter of Govt. of India Ministry of Defence dated 19.01.2010. In connection with submission for rounding off of disability element, Learned Counsel for the Respondents adverted to the Govt. of India Ministry of Defence letter dated 31.01.2001, further submitting that according to the said letter, the benefit of rounding off of disability element would accrue to an individual who is invalided out of service and who was in service on 01.01.1996 or joined thereafter. The Learned Counsel also referred to Govt. of India, Ministry of Defence, letter dated 19.01.2010, whereby it was directed to re-compute the disability element w.e.f 01.07.2009 by grant of benefit of rounding off who were invalided out of service prior to 01.01.1996 for which, each affected pensioner, who is in receipt of disability element as on 01.07.2009 would submit an application in the prescribed format to PCDA (P) for revision of disability element. In connection with the prayer of the Applicant, it is submitted that the degree of disability of the Applicant as accepted by MA (P) Allahabad from time to time, has been held in order vide letter dated 29.2.2012 and hence, no further revision of disability pension was required to be made in the case of the Applicant. It is further submitted that since the Applicant was invalided out of service prior to 01.01.1996, his case falls within the ambit of Govt. order dated 19.01.2012 and his prayer for rounding off of disability element from 30% to 50% was acted upon.

7. It would thus transpire that the Petitioner was enrolled in the Indian Army on 02.09.1977 as Infantry Soldier (General Duty). He was

re-mustered as Group 'B' Clerk with effect from 08.08.1981. He was subsequently transferred to Sikh Regimental Centre with effect from 12.05.1986. While posted in Sikh Regiment the Applicant was downgraded to low medical category CEE (Permanent) w.e.f 08.07.1991 by the Medical Board held at Military Hospital Kota for the disability, which was described as "Low Backache-724 (e) (V-67)" and was discharged from service on 30.09.1992, but was transferred to Pension Establishment w.e.f 01.10.1992 in the rank of Havildar Clerk. Consequently, he was sanctioned admissible service pension w.e.f 01.10.1992 for life by the PCDA (P) Allahabad **vide Annexure 3** to the M.A. Before discharge, he was examined by the Invaliding Medical Board on 11.05.1992 which quantified his disability at 50% for two years but at the same time, his disability was opined to be not attributable to Military service but was said to be aggravated by Military service due to stress and strain of service. In consequence, the disability pension was granted at 50% for the period between 01.10.1992 and 10.05.1997 vide PPO contained in Annexure CA-1. The Applicant was again examined by the Resurvey Medical Board on 10.05.1997 and quantified his disability at 50% (permanent) but the PCDA (P) in his discretion lowered down the disability to 20% for two years for the period between 11.05.1997 and 09.05.1999 and sanctioned disability pension (vide PPO contained in Annexure CA-2). The Applicant was again examined on 22.07.1999 by the Resurvey Medical Board and this time, his disability was quantified at 30% for five years in consultation with PCDA (P) Allahabad and he was sanctioned disability pension for the period between 22.07.1999 and 21.07.2004 vide PPO contained in Annexure CA-3. The Applicant then preferred an appeal against the reduction of his disability by the PCDA

(P) Allahabad. The Applicant was again examined by Resurvey Medical Board on 14.01.2005 and this time, the Board quantified his disability at 20% for life and accordingly, the disability pension was sanctioned for five years. The Applicant was yet again examined by the Resurvey Medical Board on 18.8.2006 and quantified his disability at 30% for life. The disability pension was sanctioned vis a vis 20% for the period from 14.01.2005 to 17.08.2006 without there being any endorsement for the disability pension for the period from 22.7.2004 to 13.01.2005. It is submitted that benefit of rounding off of disability element from 30% to 50% was notified with effect from 01.07.2009 for life in terms of letter of Govt. of India Ministry of Defence dated 19.01.2010. In connection with submission for rounding off of disability element, Learned Counsel for the Respondents adverted to the Govt. of India Ministry of Defence letter dated 31.1.2001 further submitting that according to the said letter, the benefit of rounding off of disability element would accrue to an individual who is invalided out of service and who were in service on 01.01.1996 or joined thereafter. The Learned Counsel also referred to Govt. of India, Ministry of Defence letter dated 19.01.2010 whereby it was directed to re-compute the disability element w.e.f 01.07.2009 by grant of benefit of rounding off who were invalided out of service prior to 01.01.1996 for which, each affected pensioner, who is in receipt of disability element as on 01.07.2009 would submit an application in the prescribed format to PCDA (P) for revision of disability element. In connection with the prayer of the Applicant, it is submitted that the degree of disability of the Applicant as accepted by M.A. (P) Allahabad from time to time has been held in order vide letter dated 29.02.2012 and hence no further revision of disability pension was required to be made in the case of

the Applicant. It is further submitted that since the Applicant was invalidated out of service prior to 01.01.1996, his case falls within the ambit of Govt order dated 19.01.2012 and his prayer for rounding off of disability element from 30% to 50% was acted upon.

8. To sum up, it may be reiterated that Medical Board held on 10.5.1997 considered the disability as 50% for life and the P.C.D.A (P) Allahabad lowered down it to 20% for two years. We are constrained to say that the P.C.D.A (P) has lowered down the percentage and duration without any justification or reasoned opinion. In this connection, we may refer to the decision of Hon'ble The Apex Court in **Ex.Sapper Mohinder Singh vs Union of India in Civil Appeal No 104 of 1993 decided on 14.01.1993** noted with approval in **Babu Singh Vs Union of India and others CWP No 3296 of 2003 decided on 26.4.2006**. The observation made in the decision of **Ex.Sapper Mohinder Singh (supra)** being relevant 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 petitioner was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. 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."

9. Coming to the submission whether the opinion of Resurvey Medical Board was influenced by the Medical Advisor (P) attached with

the PCDA (P) Allahabad in reducing the percentage of disability, we may refer to the averments made in the counter affidavit. Para 41 of the Counter affidavit being relevant is quoted below.

"41. That in reply to the contents of para 4(7) and (8) of the Original Application it is submitted that the Applicant was again brought before the Resurvey Medical Board where the degree of his disability "Low Backache 724 (e) (V-67) was re-assessed at 30 percent for life vide Military Hospital, Bareilly Re-survey Medical Board proceedings dated 22.7.1999 (Annexure No. 9 of MA). PCDA (P) Allahabad in consultation with Medical Advisor (Pensions) altered the recommendations of the Re-survey Medical Board and accepted his disability at 20 percent for five years including interim period w.e.f 10.5.1999 to 21.7.1999 and from 22.7.1999 to 21.7.2004 vide PPO No. D/RA/22633/1999....."

10. Taking into consideration the discussions made above, we are of the view that in case, the P.C.D.A (P) Allahabad had gone by the recommendations of the Medical Board held in 1997, the Applicant would have got disability pension @ 50% for life. By this reckoning, there would have been no requirements for holding of further Medical Board. Thus, regard being had to the ratios flowing from the decision of Hon'ble The Apex Court in **Dharamvir Singh (2013) 7 SCC 316** and **Sukhvinder Singh (2014) STPL (WEF) 468 SC**, we are of the view that since there is nothing on record of any disease or disability inhering the Applicant at the time of enrolment, the disease afflicting the Applicant is to be held to be attributable to military service and thus, he is entitled to disability pension. Further, regard being had to the decision of Hon'ble The Apex Court in **Mohinder Singh (supra)**, we are of the considered view that the P.C.D.A (P) Allahabad have arbitrarily lowered down the decision of the Medical Board which is an expert body, without any justification or opinion, which is unjust and illegal.

11. In view of the facts, and circumstances discussed above, the Applicant is entitled to disability pension @ 50% disability pension for life vide Re-Survey Medical Board held on 10 May 1997.

12. Now the question that comes up for consideration before us is whether the disability of the Applicant should be rounded off to 75% as prayed in Relief Column (IV) of the Original Application. In this connection, our attention has been drawn to the Govt. of India, Ministry of Defence Letter dated 31.01.2001, whereby the percentage of disability between 50% and 75% was ordered to be determined at 75%. Here in the case of the Applicant, the initial percentage of disability was assessed at 50%. It brooks no dispute that the condition of the Applicant has not at all improved but by all accounts, it has either been static or deteriorated. By this reckoning, the disability of the Applicant stand rounded off to 75% in terms of judgment of **Union of India and Ors vs. Ram Avtar & ors in Civil Appeal No 418 of 2012 dated 10th December 2014.**

13. At this stage, the Learned Counsel for the Respondents also called in question the payment of arrears from the date of discharge submitting that it should be restricted to three years prior to filing of the Original Application on the ground of delay and laches. It would appear that there was a delay of six months and 29 days in filing of the Original Application. The delay has been condoned vide order of the Court dated 26.03.2014. Besides, we have considered this submission in the light of the various decisions of Hon'ble The Apex Court and looking into the services rendered by the Applicant in the Indian Military and regard being had to the facts and circumstances of the case and also looking into the nature of the case, we are of the

considered view that the Applicant is entitled to arrears to be paid with interest at the rate of 9% per annum with effect from 10.05.1997.

14. In view of the facts and circumstances discussed above, we are of the view that the Re-Survey medical board held on 10 May 1997 had assessed disability @ 50% (Permanent) i.e. for life. However, Medical Adviser (Pension) attached to PCDA (P) Allahabad had reduced the disability to 20% for two years without giving any justification and without physical examination of the applicant. In view of judgment and order of **Ex-Sapper Mohinder Singh** (supra), we feel called to observe that the pension sanctioning authority has sit over the opinion of the duly constituted Re-Survey Medical Board while dealing with the case of grant of disability pension with regard to the percentage of disability pension. If opinion of Re-Survey medical board held in May 1997 is taken as authority and the disability is considered as permanent and it is attributable to and aggravated by military service, no further Re-survey medical board was required to be carried out. The Applicant deserves to be paid disability pension @ 50% for life w.e.f 10th May 1997 when the Resurvey Medical Board was held which be rounded off to 75% as per policy and judgment of Hon'ble The Apex Court in **Union of India and Ors Vs Ram Avtar and Ors** (supra). The Applicant also deserves to be paid arrears w.e.f 10.05.1997 alongwith interest at the rate of 9% per annum w.e.f. 10.05.1997.

Order

16. In the result, the instant Transferred Application succeeds and is allowed. The impugned orders dated 29.02.2012, and 17.01.2013 are set aside attended with observation that the opinion regarding assessment of disability as done by the Medical Board proceedings

held on 22.07.1999 and 18.08.2006 shall not be taken into consideration. The Applicant is entitled to disability pension @ 50% for life as per recommendation of Re-survey Medical Boards held on 10.05.1997 which deserves to be rounded off to 75% in terms of judgment of **Union of India and Ors vs. Ram Avtar & ors in Civil Appeal No 418 of 2012 dated 10th December 2014**. The Respondents are also directed to pay arrears of aforesaid disability pension alongwith interest @ 9% per annum from 10.05.1997 till the date of actual payment in terms of the above directions. The Respondents are directed to give effect to the order within three months from the date of receipt of a certified copy of this order.

17. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice V.K. DIXIT)
Member (J)

Date: December 2015

MH/-

