

Court No.1

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

Original Application No. 88 of 2020

Wednesday, this the 17th day of February 2021

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

Ex- 2964884F Hav Rakshpal Singh of 24 Rajput, S/o Shri Jalim Singh, R/o Vill- Bir Singh Pur, PO -Hari Har Pur, Distt-Farrukhabad (U.P.)

..... Applicant

Ld. Counsel for the: **Shri RN Tripathi, Advocate**
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. OIC, The Artillery Records.
3. Principal Controller of Defence Accounts (Pension), Draupadighat, Allahabad, U.P.

..... Respondents

Ld. Counsel for the
Respondents

: **Mrs Anju Singh**
Central Govt Counsel.

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed following reliefs:-

(a) To issue an order or direction quashing the order dated 11 Jul 94 mentioned in the Annexure No A-1 and Directing the respondents to continue the disability pension of the applicant since the date the same was stopped.

(b) To allow OA with the costs.

(c) Any other or further order or direction which this Hon’ble Court may deem just, fit and proper in the circumstances of the case.

2. The undisputed factual matrix on record is that the applicant was enrolled in the army on 07.07.1969 and was discharged from service on 01.12.1989 on fulfilling the conditions of his enrolment on compassionate grounds at his own request in low medical category CEE (Permanent). At the time of discharge Release Medical Board of the applicant held at 179 Military Hospital on 07.07.1989 assessed disability **“CLINICAL PERNICIOUS MALARIA CONVULSION SOLITARY OLD FOR RMB 084 (F) 780 (D), V-67”** @ 6 to 10% for two years. The applicant was granted service pension from the date of retirement. He was also granted disability element from 01.12.1989 to 07.04.1994 as per recommendation of Re-

Survey Medical Board (RSMB) from time to time. Further the applicant was brought before Re-survey Medical Board at Military Hospital, Agra and his disability was assessed 30% for five years vide medical board dated 21.02.1994. Claim of the applicant for the grant of disability pension was rejected by PCDA (P), Allahabad with the direction that “the award of temporary disability pension granted to the applicant has been discontinued from 08.04.1994 disability being NIL for life. Being aggrieved, the applicant has approached this Tribunal for the grant of disability pension.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Army on 07.06.1969 in a medically fit condition. At the time of retirement Release Medical Board (RMB) of the applicant was held and he was diagnosed as a case of **“CLINICAL PERNICIOUS MALARIA CONVULSION SOLITARY OLD FOR RMB 084 (F) 780 (D), V-67”** and he was placed in low medical category ‘CEE’ (Permanent). The RSMB opined the disability of the applicant to be attributable to military service. He was continuously granted disability pension from his discharge till 07.04.1994 as per recommendation of periodical RSMBs held from time to time. Learned counsel for the applicant pleaded that though last RSMB re-assessed the disability of the applicant @ 30% from 08.04.1994 for 5 years.

However, Medical Advisor attached with PCDA (P), Allahabad reduced the percentage of the disability and rejected the disability claim of the applicant on the ground of disability being less than 20%. He pleaded that the applicant is still suffering with the disease hence he is entitled to disability pension. In nutshell, submission of learned counsel for the applicant was that since the last periodical RSMB had assessed applicant's disability as 30% for 5 years, he was entitled to disability pension. The act of overruling the recommendations of RSMB by higher competent authority was wrong and should be set aside. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension @ 30% and its rounding off to 50%. He also pleaded for disability element of 30% to be restored.

4. **Per Contra**, learned counsel for the respondents conceded to the factual aspects of applicant's disability and the recommendations of RSMB. He further submitted that the last periodical RSMB considered the disability of the applicant @ 30% for 5 years w.e.f. 08.04.1994. He submitted that the recommendation of RSMB was overruled by Medical Advisor at PCDA (Pension) who is a higher competent authority. He submitted that Regulation 81 of Pension Regulations for the

Army 2008 Part-I stipulates 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 either attributable to or aggravated by military service in non-battle casualty cases and the disability is assessed at 20% or more. A low medical category person who retires on superannuation or on completion of tenure may also be granted disability pension under the provision of Regulation 37 of Pension Regulation for the Army (PRA), if he fulfills the twin eligibility conditions as stated except that the percentage of disability should be 20% or more. Since the applicant's disability was assessed as 30% but Medical Authority at PCDA (Pension) has reduced the percentage, hence as per Government policy, the applicant is not entitled to disability pension. He further pleaded that applicant was advised to prefer appeal if he was not satisfied with the decision of the Medical Advisor, PCDA (P), Allahabad but he did not do so. He pleaded that the O.A. be dismissed.

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

6. This is a case where the RSMB had conceded the disease of the applicant @ 30% for 5 years. However Medical

Advisor at PCDA (Pension) Allahabad overruled the opinion of the last periodical RSMB and reduced the disability percentage below 20%. However, it is clear that the higher competent authority i.e. PCDA (Pension), Allahabad has not physically examined the applicant. The Hon'ble Apex Court has made it very clear that the opinion of the Medical Board cannot be overruled by higher chain of command without physical medical examination of the patient. In this context the operative portion of the judgment of Hon'ble Apex 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 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.”

7. Thus we set aside the decision of PCDA (P), Allahabad to reduce the percentage of disability from 30% to below 20% and are of the considered opinion that the applicant was entitled to disability pension @ 30% for 5 years w.e.f. 08.04.1994.

8. Additionally, the law on limitations is also well settled in terms of judgment of Hon'ble Apex Court in the case of **Shiv Dass vs. Union of India** reported in 2007 (3) SLR 445 which has observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In this judgment, the Hon'ble Apex Court has held as under:-

"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

9. Thus in the final analysis, the applicant cannot claim arrears beyond three years from the date of filing of O.A. Date of filing of the O.A. is 15.11.2019. Thus in totality the applicant is not entitled for claiming the arrears of disability pension

between 08.04.1994 to 07.04.1999. Therefore, in the interest of substantive justice, for wrongful reduction of disability percentage from 30% to below 20% by PCDA (Pension), Allahabad, the applicant is entitled only for a compensation from respondents.

10. Accordingly, the Original Application No. 88 of 2020 is partly **allowed**. We award compensation of Rs 1,00,000/- (Rupees one lacs) which shall be paid by respondents to applicant for wrongful denial of disability element @ 30% for 5 years w.e.f. 08.04.1994. The same shall be deposited in the Registry by the respondents within three months from today and shall be released to the applicant. The respondents are further directed to refer the applicant's case for RSMB for re-assessing the medical condition of the applicant for further entitlement of disability pension, if any, within a reasonable period of time preferably within two months.

No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 18 February, 2021

UKT/-