

Court No. 1

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

Original Application No. 464 of 2018

Friday, this the 04th day of December, 2020

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

No. 14528217Y Ex Cfn Bajrang Bahadur Singh, s/o Sri RajNarain Singh R/O vill-Sairapur, PO-Musapur Distt-Raebareili-229216 (UP).

.... Applicant

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

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Addl Dte Gen of Personnel Service, Adjutant Generals Branch (AS/PS-4/Imp-II) Integrated Head Quarter Ministry of Defence, South Block, New Delhi.
3. Officer In-Charge, EME Records, PIN-900453, 56 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

... Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal**, Advocate
Respondents. Assisted by **Maj Sini Thomas**,
Departmental Representative

ORDER (Oral)

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

- (I) To set aside letter dated 24.01.2017 & 06.03.2017 (Annx No 1 & 2).*
- (II) To call for Original Records of Re-survey Medical Board held on 23.06.2001.*
- (III) To grant disability @ 30% which was earlier granted as condition of applicant remain static and round off the same to 50% as per GOI, MoD letter dated 31.01.2001.*
- (IV) To pay arrear of difference of disability pension along with 12% interest from the date of his last Re-survey Medical Board held i.e., 23.06.2001 since when disability pension has been discontinued being below 20%.*
- (V) Any other suitable relief this Hon'ble Court deems fit and proper may also be granted.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 12.01.1997 and was invalided out of service after rendering approx 08 years w.e.f. 29.11.1984 (AN) in terms of Rule 13 (3) III (v) of Army Rules 1954. Prior to discharge, Invaliding Medical Board assessed his disability 'Poly Arthritis 714 (b)' @ 30% for two years aggravated by military service. Accordingly applicant was paid disability element @ 30% for the period 30.11.1984 to 26.10.1986. Further Re-survey Medical Board (RSMB) assessed his disability element @ 30% for ten years but PCDA (P) Allahabad

accepted the same @ 20% and paid disability element accordingly for the period 27.10.1986 to 31.12.1996. Further RSMB accepted the disability element @ 20% for five years but PCDA (P) Allahabad accepted the disability @ less than 20% i.e. 11-14% for five years w.e.f. 01.01.1997 and stopped payment of disability element from the year 1997. Later due to change of policy issued in 2001 applicant's final RSMB was held on 23.06.2001 in which his disability element was reduced to below 20% (11-14%) for life. Claim for payment of disability element and appeals have been rejected. It is in this perspective that the applicant has preferred the present O.A.

3. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of enrolment/commission and asserted that after having served for more than three years, he was found to be suffering from the aforesaid disabilities w.e.f. 26.08.2000 i.e. after completing more than 37 years. The Ld. Counsel for the applicant asserted that the applicant has picked up these disabilities due to stress and strain of military service. Ld. Counsel for the applicant further submitted that prevailing service conditions in the military units are very demanding and put similar stress as that of field posting. Relying upon judgment delivered by

Hon'ble Co-ordinate Bench, Chandigarh in O.A. No 1774 of 2014 ***Kishori Lal vs Union of India & Others*** Ld. Counsel for the applicant argued that the disability of the applicant is principally due to stress and strain of military service hence even of the disability percentage has been reduced it should be rounded off to 50% in terms of aforesaid judgment and Govt of India, Ministry of Defence letter dated 31.01.2001.

4. On the other hand, Ld. Counsel for the respondents contended that disability element of the applicant has been stopped w.e.f. 01 Jan 1997 being disability percentage first reduced by PCDA (P) Allahabad and later by final RSMB held on 23.06.2001 which assessed applicant's disability below 20% (11-14%), hence he is not entitled to disability element. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB, further RSMBs and rejection order of disability element claim. The only question which is to be answered is as to whether disability element is payable to applicant when disability percentage is reduced to below 20% by PCDA (P), Allahabad and Final RSMB conducted on 23.06.2001?

6. On careful scrutiny of RMB and various RSMBs it is obvious that on one hand disability percentage has been reduced by PCDA (P), Allahabad and final RSMB but condition of applicant is said to be static which is intriguing to note.

7. The law on this point is very clear as reported in (2014) STPL (WEB) 468 **Sukhwinder Singh vs Union of India & Ors**, judgment delivered by Hon'ble Supreme Court in which it was held as under:-

"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty percent and seems to us to be logically so. Fourthly, whenever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."

8. Since the applicant was invalidated out of service on 30.11.1984 by a duly constituted Invaliding Medical Board (IMB) before completion of terms of engagement, the aforesaid judgment in the case of **Sukhwinder Singh** (supra) shall apply and applicant's disability pension shall be presumed to be 50%.

9. Thus keeping in view of the above, applicant seems to be entitled to 50% disability element w.e.f. 01.01.1997. Since applicant has approached this Tribunal after an inordinate delay, he is entitled to disability element w.e.f. three years prior to filing of O.A. The O.A. was filed on 10.11.2017.

10. The O.A. is **allowed** accordingly.

11. The respondents are directed to grant disability element @ 50% w.e.f. November, 2014 onwards and pay the arrears within four months from today. Default will invite interest @ 9%.

12. Pending applications, if any, are disposed of.

13. No order as to cost.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 04th December, 2020

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