

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 88 of 2021**Friday, this the 29<sup>th</sup> day of January, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. 14486742L Ex Sepoy Sant Ram  
S/o Late Kalideen,  
R/o Village – Bhugaicha, Post – Kunehta,  
District – Hamirpur (UP) Pin-210507

..... Applicant

Ld. Counsel for the Applicant: **Shri R. Chandra**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Army headquarters, DHQ Post Office, New Delhi – 110011.
3. The Officer-In-Charge, Artillery Records, Nasik Road Camp, (Maharashtra).
4. The Chief Controller Defence Accounts, Draupadighat, Allahabad-14 (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Anurag Mishra**,  
Central Govt Counsel.**ORDER**

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

- “(I) The Hon'ble Tribunal may be pleased to set aside the orders dated 14/01/1997 (Annexure No A-1).
- (II) The Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from

17/05/1988 along with its arrears and interest thereon at the rate of 18% per annum.

(III) Any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation."

2. Briefly stated facts of the case are that the applicant was enrolled in the Army on 26.09.1983 and was invalided out from service on 15.05.1988 (AN) in Low Medical Category before completion of terms of engagement. The Invaliding Medical Board (IMB) assessed his disability "**LEPROSY NON LEPROMATOUS (BORDERLINE TUBERCULOID) 030 (d) V-67**" @ 100% for two years and opined the disability to be attributable to military service. The disability claim of the applicant was rejected by PCDA (P) Allahabad vide their letter dated 16.02.1989. The appeal preferred by the applicant was rejected by the competent authority vide order dated 31.07.1991 on the grounds that disability is not attributable to military service and also not connected with military service being existed prior to his enrolment into Army. Thereafter, applicant approached to Artillery Records through his application dated 13.01.1997 for grant of disability pension, the same was replied/rejected vide letter dated 24.01.1997. It is in this perspective that the applicant has preferred the 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 and there is no note in the service documents that he was suffering from any disease at the time of

enrolment in Army. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He submitted that the act of overruling the recommendations of IMB by higher competent authority or PCDA (P) Allahabad was wrong and should be set aside. He placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. UOI & Ors***, 2013, AIR SCW 4236, ***Sukhvinder Singh vs. Union of India***, reported in (2014) 14 SCC 364, ***Union of India and Ors vs. Angad Singh Titaria***, reported in (2015) 12 SCC 257 and ***Union of India and Ors vs. Rajbir Singh***, reported in (2015) 12 SCC 264 and pleaded that applicant be granted disability pension.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. "**LEPROSY NON LEPROMATOUS (BORDERLINE TUBERCULOID) 030 (d) V-67**" has been regarded as 100% for two years by IMB as attributable to military service. However, PCDA (P) Allahabad has rejected the claim of the applicant stating that the disability of the applicant was regarded as not attributable to military service and does not fulfil the conditions. Therefore, in terms of Rule 173 of Pension Regulations for the Army 1961 (Part-1), applicant is not entitled for disability pension. 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 IMB proceedings. The only question which needs to be answered is whether the PCDA (P) has power to overrule the opinion of the IMB for the disability?

6. This is a case where IMB had conceded the disability of applicant “**LEPROSY NON LEPROMATOUS (BORDERLINE TUBERCULOID) 030 (d) V-67**” as attributable to Military Service. However, PCDA (P) Allahabad has rejected the claim of applicant on the ground that disability of applicant has been viewed as neither attributable to nor aggravated by military service and not related to service. However, it is clear that the higher competent authority i.e. PCDA (Pension) 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 by a higher Medical Board. 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 in sum and substance we set aside the decision of competent authority and PCDA (Pension) overruling the opinion of IMB without physical examination of applicant by a higher Medical

Board and restore the original opinion and findings of IMB for grant of disability element and are of the considered opinion that the applicant was entitled to disability element for his disability “**LEPROSY NON LEPROMATOUS (BORDERLINE TUBERCULOID) 030 (d) V-67**” @ 100% for two years from the date of discharge.

8. Resultantly, the O.A. deserves to be allowed, hence **allowed**. The impugned orders passed by the respondents and PCDA (P) Allahabad are set aside and the original opinion of IMB is restored. The applicant’s disability “**LEPROSY NON LEPROMATOUS (BORDERLINE TUBERCULOID) 030 (d) V-67**” is to be considered as attributable to military service in line with IMB recommendations. The applicant is entitled to disability pension @ 100% for two years from the date of invaliding from service. The respondents are directed to grant disability pension @ 100% for two years from the date of invaliding from service. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. The respondents are also directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension. Default will invite interest @ 8% per annum till actual payment.

9. No order as to costs.

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

Dated: January, 2021  
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