

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 41 of 2021**Thursday, this the 21st day of January, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. JC-802539K, Rank-Nb. Subedar Chandra Bali
S/o Shri Baiju Chaudhary
R/o Arya Samaj Mandir, Sadar Bazar
Bareilly Cantt (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri Vijay Kumar Pandey**, Advocate

Versus

1. Union of India, through the Secretary of Defence, D.H.Q. Post Office, New Delhi.
2. Addl Dte General of Personnel Services PS-4 (Imp-III), Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), DHQ PO, New Delhi – 110011.
3. OIC Records, Records Army Education Corps (AEC), Pachmarhi-908777 C/o 56 APO.
4. PCDA (P), Draupadighat, Allahabad (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) That this Hon'ble Tribunal may kindly be pleased to quash the impugned orders dated 18.02.2008, 31.05.2001 & 03.05.2001, whereby the disability Pension Elements of the applicant has been rejected by the opposite party no. 2, 3 & 4

as contained in annexure no. 1, 2 & 3 to this original application.

(ii) That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to pay the Disability Pension Elements by rounding off disability as 50% from 30.09.2000 to actual date of payment and also onwards, and provide the interest on the aforesaid delayed amount of disability pension with 18% p.a. since due date to actual date of payment. That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant.

(c) That this Hon'ble Tribunal may be pleased to award the cost of this original application and legal expenses Rs. 20,00,000/- (RUPEES TWENTY LAC) and allow the same.

2. Briefly stated facts of the case are that the applicant was enrolled in the Army on 13.09.1972 and was discharged on 30.09.2000 (AN) in Low Medical Category on completion of period of service/tenure and age limit after rendering 28 years of service. At the time of retirement from service, the Release Medical Board (RMB) assessed his disability '**IHD ACUTE INF WALL MI**' @ 30% for two years and opined the disability to be aggravated by military service due to stress and strain of military service. The disability claim of the applicant was rejected by PCDA (P) Allahabad vide their letter dated 03.05.2001 deciding disability of applicant as neither attributable to nor aggravated by military service under Rule 17A of the Entitlement Rules of Casualty Pensionary Awards, 1982. Thereafter, applicant submitted many applications from the year 2001 to 2008 and some of them have been replied by the respondents but no disability pension

has been granted to the applicant. 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 contacted during the service, hence it is attributable to and aggravated by Military Service. He submitted that the act of overruling the recommendations of RMB by higher competent authority of PCDA (P) was wrong and should be set aside. He further submitted that in similar cases, the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. Union of India*** (2013) 7 SCC 316, ***Bimal Kishore Charan v. Union of India***, OA No. 277 of 2016, decided on 04.01.2018, AFT (RB) Kolkata O.A. No. 113 of 2013, ***Ex Nb Sub (Clk) Sachidanand Singh vs. Union of India & Ors***, decided on 07.08.2015 and Rule 14 of the ***Entitlement Rules for Casualty Pensionary Awards, 1982***, applicants have been granted disability pension, as such the applicant is also entitled to disability pension @ 30% duly rounded off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. "**IHD ACUTE INF WALL MI**" has been regarded as 30% for two years by RMB as aggravated by military service. However, Medical Advisor (Pension), attached to PCDA (P) Allahabad has rejected the claim of the applicant deciding disability as neither attributable to nor aggravated by military service

being a constitutional in nature and not related to service. 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 proceedings. The only question which needs to be answered is whether the PCDA (P) has power to overrule the opinion of the RMB for the disability?

6. This is a case where the RMB had conceded the disability of the applicant "**IHD ACUTE INF WALL MI**" as aggravated by 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 being a constitutional in nature 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 RMB without physical examination of applicant by a higher Medical Board and restore the original opinion and findings of RMB for grant of disability element and are of the considered opinion that the applicant was entitled to disability element for his disability “**IHD ACUTE INF WALL MI**” @ 30% 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 RMB is restored. The applicant’s disability “**IHD ACUTE INF WALL MI**” is to be considered as aggravated by military service in line with RMB recommendations. The applicant is entitled to disability element of pension @ 30% for two years, which shall be rounded off to 50% for two years from the date of his discharge. The respondents are directed to grant disability element of pension @ 50% for two years from the date of discharge. 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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