

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 536 of 2019**Thursday, this the 28<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)**Service No. 14223475 Ex Sep Kamlesh Chaudhary  
S/o Someshwar Chaudhary  
R/o Village – Haldi  
District – Ballia (UP) PIN-277402

..... Applicant

Ld. Counsel for the Applicant: **Shri V.P. Pandey**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, Integrated Headquarter, Ministry of Defence (Army), South Block, New Delhi – 110011.
3. Officer Incharge, Records, The Kumaon Regiment, PIN-900473, C/o 56 APO.
4. Principal Controller of Defence Account (Pension), Draupadighat, Allahabad.

..... 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) To set aside/quash the order dated 26 November, 2018 and Primary order of rejection dated 14 July, 1984 as contained in Annexure No. A-1 and A-2 to this O.A.

- (ii) To issue/pass an order or direction to the Respondents to grant disability pension to the applicant.
- (iii) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.
- (iv) Cost of the O.A. be awarded to the applicant."

2. Briefly stated facts of the case are that the applicant was enrolled in the Army on 07.11.1974 and was invalided out from service on 03.10.1978 in Low Medical Category before completion of terms of engagement. The Invaliding Medical Board (IMB) assessed his disability "**RHEUMATIC HEART DISEASE (MITRAL INCOMPETANCE)**" @ 30% 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 01.09.1979 which was communicated to applicant vide Records, The Kumaon Regiment letter dated 26.11.2018. No appeal was preferred by the applicant. Thereafter, applicant submitted many applications dated 25.05.1984, 15.09.1987 and 26.12.2018 which were replied by the respondents vide letter dated 14.07.1984 and 08.01.2019 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 IMB by higher competent authority of PCDA (P) was wrong and should be set aside. He 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. **“RHEUMATIC HEART DISEASE (MITRAL INCOMPETANCE)”** has been regarded as 30% for two years by IMB as attributable to military service. However, Medical Advisor (Pension), attached to PCDA (P) Allahabad has rejected the claim of the applicant stating that “the disability from which the applicant suffered during his service in the Army is not attributable to military service”. He further submitted that as per 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 **“RHEUMATIC HEART DISEASE (MITRAL INCOMPETANCE)”** 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 **“RHEUMATIC**

**HEART DISEASE (MITRAL INCOMPETANCE)” @ 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 IMB is restored. The applicant’s disability “**RHEUMATIC HEART DISEASE (MITRAL INCOMPETANCE)**” is to be considered as attributable to military service in line with IMB recommendations. The applicant is entitled to disability pension @ 30% for two years from the date of invaliding from service. The respondents are directed to grant disability pension @ 30% 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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