

Court No. 1
Reserved Judgment

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW
ORIGINAL APPLICATION NO. 627 of 2017**

Friday, this the 27th day of April, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No. 13883084A Ex Nk Satya Kumar Pandey Vill Bararahi
Post Naiyapar, Tahsil Sadar District Gorakhpur U.P.

....Applicant

Ld. Counsel for the : **Shri V.A.Singh,**
Applicant **Advocate.**

Verses

1. Union of India, and others through its Secretary, Min of Defence, South Block New Delhi-110011
2. Chief of Army Staff, Integrated Headquarters of MoD (Army) DHQ PO, New Delhi-110011.
3. ASC Records (South) Bangalore-560007.

.....Respondents

Ld. Counsel for the : Ms Appoli Shrivastava
Respondents **Advocate, Sr.** Central
Govt Standing Counsel.

Assisted by : Maj Salen Xaxa, OIC Legal Cell.

ORDER**"Per Hon'ble Air Marshal BBP Sinha, Member (A)"**

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

"(i) To direct the Respondents to consider Applicant claim of Disability pension since date of Discharge 30.09.1997 and to be rounded off from 20% to 50% as per the policy and issue fresh PPO in this regards.

"(ii) To direct respondents to pay the claim with 10% interest."

2. The facts in nutshell are that the Applicant was enrolled in the Indian Army on 16 Sep 1980 and was discharged with effect from 30 Sept 1997 under Army Rule 13 (3) Item III (i) of 154 on completion of his terms of engagement in low medical category for his disability termed as "VIRAL HEPATITIS (HBs AG Negative-070)". Before discharge, the applicant was brought before the Release Medical Board which assessed his disability as 20% for two years and opined it to have been aggravated by military service. In view of the recommendations of the RMB, the claim for disability pension was processed and forwarded to the PCDA (P) Allahabad which in consultation with the Advisor attached with it, reassessed the disability as 1-5% and rejected the claim for disability pension vide communication dated 26 Feb

1998. No appeal was filed by the applicant against the decision of the PCDA (P) Allahabad. On expiry of two years, the Applicant was brought before Resurvey Medical Board which was held at 12 Air Force Hospital on 8 Oct 2001. The aforesaid Medical Board assessed the disability as less than 20% for life. Again the claim for disability pension was processed and forwarded to PCDA (P) Allahabad which in consultation with the Medical Advisor attached to it, reassessed the disability as less than 20% (11 to 14%) and rejected the claim for disability pension vide communication dated 19 march 2002. However, the applicant did not prefer the appeal within six months but preferred the same after efflux of 15 years vide Appeal dated 11 May 2017. Being inordinately delayed, the said appeal was not processed by the Records. It is in this backdrop that the present O.A has been filed.

3. We have heard learned counsel or the applicant as also learned counsel for the respondents. We have also gone through the material facts on record.

4. The contention advanced across the bar by learned counsel for the applicant is that the medical Advisor attached to PCDA (P) Allahabad was the final authority to decide on final admissibility of disability pension till 2004 and subsequently the adjudication power has been vested to OIC

Records vide MoD letter dated 20 July 2006. The learned counsel also referred to para 173 of Pension Regulation of the Army 1961 Part 1 which specifies primary condition for grant of disability pension to the effect that "unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of disability which is attributable to or aggravated by military service and is assessed as 20% or over.

5. It brooks no dispute that in the instant case the Release medical Board assessed the disability of the applicant as 20% for two years and aggravated by military service. However the disability percentage was interfered with by the PCDA (P) Allahabad in consultation with its Medical Advisor who reassessed the same as 1 to 5% without physical medical examination of applicant resulting in denial of disability element of pension to the applicant.

6. Hon'ble The Apex Court in **Ex.Sapper Mohinder Singh vs Union of India in Civil Appeal No 104 of 1993 decided on 14.01.1993** nodded with approval in **Babu Singh Vs Union of India and others CWP No 3296 of 2003 decided on 26.4.2006**. The observation made in the decision of **Ex.Sapper Mohinder Singh (supra)** being relevant 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 petitioner was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. 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 considering the legal aspects emerging out of above mentioned judgment of Hon'ble Apex Court, we set aside the reduction of disability percentage from 20% to 1-5% by medical advisor, PCDA Allahabad. Thus the original decision of RMB i.e. 20% disability will hold for two years after discharge.

8. In the next RSMB held in 2001, the disability of the applicant was assessed as less than 20% for life, however the same was assessed as 11-14% for life by medical advisor, PCDA (P) Allahabad.

9. The only question for consideration is whether the Applicant shall be entitled to disability pension in terms of his disability which was assessed at less than 20%. It brooks no dispute that the applicant was released from service on account of being in low medical category and further

extension was denied. Hon'ble the Apex in the case of **Ram Avtar Vs Union of India and Ors** reported in Civil Appeal No 418/2012 has clearly held that the disability even in cases of routine release and retirement would be eligible for rounding off of disability pension. In our view, the case is fully covered by the aforesaid decision of Hon'ble Apex Court in the case of above mentioned judgment. Relevant part of judgment is quoted below:-

"We do not see any error in the impugned judgment(s) and order(s) and therefore all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs."

10. In the above conspectus we are of the view that the Applicant is held entitled to disability pension initially @ 20% for two years from his date of discharge, thereafter @ 11-14 rounded off to 50% w.e.f. last three years of filing this O.A. is 12.09.2017.

11. Accordingly, the O.A is partially allowed. The impugned orders are set aside. The applicant is eligible for disability element of pension @ 20% for two years after the date of discharge. Thereafter the disability of the Applicant is assessed as 11-14% for life which in terms of the aforesaid decision would stand rounded off to 50% for life. The arrears of disability pension shall be paid for first 02 years after discharge and thereafter w.e.f. last three years of filing this

O.A. The order is to be implemented within four months from the date of production of a certified copy of this order. For default the applicant shall be entitled to interest at the rate of 9% on the amount accrued from due date till the date of actual payment.

12. No order as to costs.

(Air Marshal BBP Sinha) **(Justice S.V.S. Rathore)**
Member (A) **Member (J)**

Dated: April, 27 , 2018
MH/-