

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 19 of 2019**Thursday, this the 16th day of May 2019**"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"**

14910326W Ex Sep Munna Singh S/O Late Shri Mahetab Singh, Village and post-Broda, Tehsil-Kunch, Distt-Jaloun (U.P.)-285205.

..... Applicant

Ld. Counsel for the Applicant : **Shri Rohitash Kumar Sharma,**
Advocate.

Versus

1. Union of India, through the Secretary, Ministry of defence, DHQ, PO-New Delhi-110011.
2. The Chie of the Army Staff, Integrated HQ of Ministry of defence (Army), DHQ, PO-New Delhi-110011.
3. Additional Director General Personnel Services (PS-4), Integrated HQ of Ministry of Defence (Army), DHQ, PO-New Delhi-110011.
4. Officer-in-Charge, Records the Mech Inf Regt, PIN-900476, C/O 56 APO.
5. Controller Defence Account (Pension), Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the Respondents. : **Mohd. Zafar Khan,**
Central Govt. Standing Counsel

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:-

- (a) *Call for the records based on which the respondents have rejected the request for the applicant for the disability pension including the impugned findings of Invalid Medical Board Proceeding dated 31.03.1997 and quash the orders including order dated 24.10.2017, 09.10.1998 annexed as annexure A1 and order dated 07.01.2016 (annexed as annexure A-5) and issue directions to the respondents to grant the disability pension to the applicant w.e.f. 02.06.1997.*
- (b) *Direct the respondents to condone the shortfall in qualifying service for grant of service pension and to pay his eligible service pension w.e.f. 02.06.1997.*
- (c) *Direct the respondents to pay the applicant, constant attendant allowance w.e.f. 02.06.1997.*
- (d) *Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 31.05.1983 and was invalidated out of service on 31.05.1997 in low medical category 'EEE' after having rendered 14 years of service in terms of Rule 13 (3) III (iii) of Army Rules 1954. The Invaliding Medical Board (IMB) held at Military Hospital, Ahmednagar on 31.03.1997 assessed his disabilities (i) 'Amputation Through Knee (RT) V-67' @ 70% for two years neither attributable to nor aggravated by military service (NANA) and (ii) 'Stricture Urethra (Optd) 598' @ 30% for two years as attributable to military service. However the disability claim preferred by the applicant was rejected by PCDA

(P) Allahabad vide order dated 09.10.1998. 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. The disabilities occurred to the applicant when he met with a scooter accident on 14.04.1996 while on sanctioned casual leave for the period 13.04.1996 to 15.04.1996. He drew our attention to the endorsement made on page 3 of the IMB which clearly opines that the disability 'Stricture Urethra (Optd) 598' @ 30% for two years is attributable to military service and 'Amputation Through Knee (RT) V-67 @ 70% for two years to be NANA. He further submitted that the competent authority had overruled the opinion of IMB and denied grant of disability element for both the disabilities on grounds of the disabilities being NANA. He pleaded that the applicant deserves to be granted 100% disability element for both his disabilities along with constant attendant allowance.

4. On the other hand, Ld. Counsel for the respondents submitted that the applicant's disabilities 'Stricture Urethra (Optd) 598' and 'Amputation through knee (RT) V-67' both had been opined as neither attributable to nor aggravated by military service (NANA) by the competent medical authority. He further concluded that the applicant's claim for disability element had been rightly rejected in accordance with Para 173 of the Pension Regulations for the Army, 1961 (Part-I) which

clearly states that disability pension is admissible to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by military service and is assessed at 20% or more. 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 and rejection order of disability pension claim.

6. We have noted that the respondents have not filed a copy of IMB report of the applicant whereas the applicant has filed the same. However on perusal of O.A. and its annexures it becomes clear that it is a case of overruling of IMB opinion by the PCDA (P), Allahabad. It is clear that due to accident while on casual leave, the applicant sustained a serious knee injury in a road traffic accident while doing his personal work. From the facts it is established that the accident in which the applicant sustained injury in his Right knee had no causal connection with army duty. Such causal connection is a condition precedent for grant of disability pension. On this point reference may be made to the following pronouncements of Hon'ble Apex Court:-

- (a) Union of India vs Ex Naik Vijay Kumar, Civil Appeal No 6583/2015 decided on 26.08.2015.
- (b) Sukhwant Singh vs Union of India, (2013) 12 SCC 228.
- (c) Union of India vs Talwinder Singh, (2012) 5 SCC 480.
- (d) Union of India vs Jujhar Singh, AIR 2011 SC 2598.

This injury resulted in his knee being amputated. However it is also clear from the remarks in IMB on attributability and the remarks of specialist that the second disability i.e. 'Stricture Urethra (Optd) 596' was a direct result of post operative care for a prolonged period and hence the medical board had opined this disability @ 30% for two years as attributable to military service. The issue of sanctity of the opinion of a Medical Board and its overruling by a higher formation is no more Res Integra. The Hon'ble Supreme Court has made it clear that without physical medical examination of a patient, a higher formation cannot overrule the opinion of a Medical Board. Thus in light of the observations made by the Hon'ble Apex Court in the case of **Ex Sapper Mohinder Singh vs. Union of India & Others** in Civil Appeal No 104 of 1993 decided on 14.01.1993, we are of the considered opinion that the decision of competent authority in over ruling the opinion of IMB is void in law. The relevant part of the aforesaid judgment 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. In view of the above, we set aside PCDA (P) Allahabad letter dated 09.10.1998 (Annexure No A-1 to the O.A.) and uphold the findings of IMB vide which first disability 'Amputation Through Knee (RT) V-67' @ 70% for two years is considered as neither attributable to nor aggravated by military service (NANA) and second disability Stricture Urethra (Optd) 598 @ 30% for two years is held as attributable to military service.

8. Hence we are of the view that the applicant who is presently in receipt of invalid pension is held entitled to disability pension @ 30% for two years for his disability 'Stricture Urethra (Optd) 598' w.e.f. the date of his discharge.

9. As a result of foregoing discussion, the O.A. is **partly allowed**. The impugned orders are set aside. The applicant shall be entitled to disability pension @ 30% for two years w.e.f. the date of discharge i.e. 01.06.1997. However due to law of limitations the applicant shall be eligible to receive the arrears of service element of disability pension (over and above invalid pension, if any) from 03 years before filing of this O.A. The date of filing of this O.A. is 04.04.2018. Additionally the respondents are required to carry out a fresh RSMB for the applicant for his second disability i.e. 'Stricture Urethra (Optd) 598'. The applicant's future entitlement of disability element will depend on the outcome of his RSMB. The respondents are directed to give effect to this order within a period of four

months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: May, 2019
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