

Court No. 1
E-Court
Reserved

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 56 of 2021

Tuesday, this the 7th day of September, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex WO- Ram Ashray Yadav (No-8367064N) son of Late Shri Tirath Raj Yadav,
Village – Chhapra, Post – Kui Bazar, Dist- Gorakhpur (UP) PIN-273405.

..... Applicant

Ld. Counsel for the Applicant: **Col BP Singh, (Retd)**, Advocate

Versus

1. Union of India, through Ministry of Defence, (Army), South Block, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army). South Block, New Delhi-110011.
3. Principal Controller Defence Accounts (Pension), Draupadi Ghat Allahabad-14.
4. Officer in-Charge, Records, Army Postal Service Records, PIN-900746, C/O 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh**,
Central Govt. Counsel.

ORDER

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

“(a) Issue/pass an order or directions to the respondents to quash/set-aside the PPO No. D/RA/5171/98 dated 03.08.1998 (Annexure No A-3)

issued by PCDA (P) being illegal arbitrary and without application of mind.

(b) Issue/pass an order or direction to appropriate nature to the respondents to grant the entitled 60% disability pension from 14.06.1978 to 29.09.1992 and 50% disability pension from 30.09.1992 onward, as granted by RSMB duly approved by higher medical authority and the same be "rounded off" to 75% disability pension to the applicant, as a matter of right as provided by Govt of India letter No. 1 (2) / 97/1/D (Pen-C) dated 31.01.2001 (Annexure No. A-7) supported by the position held by the Supreme Court.

(c) Issue/pass any other order or directions as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(d) Allow this application with costs.

2. Briefly stated facts of the case are that applicant had voluntarily joined Army Postal Service (APS) Corps on deputation as Warrant Officer on 25.06.1973 and was repatriated to Civil Post office on 13.06.1978. Prior to repatriation to his parent department, applicant being affiliated with **'PLEURIS Y' C THICKENED PLEURA (RT) (TUBERCULAR) N ORIGIN (012B)** was brought to before Release Medical Board (RMB) held on 11.04.1978 which assessed his disability @ 60% for two years attributable to and connected with military service. Accordingly, he was granted disability element of pension. Thereafter, applicant has undergone various Re-Survey Medical Boards (RSMB). His RSMB was held on 19.01.1993 which has assessed his disability @ 50% for 10 years. On submitting aforesaid claim, PCDA (P) Allahabad has reduced his disability percentage @ 20% for five years. Accordingly, the applicant was granted disability element for the period w.e.f. 30.09.1992 to

04.01.1998 vide PPO No. D/RA/5171/98 dated 03.08.1998. Again RSMB of applicant was conducted on 15.02.1998 which has assessed his disability @ 20% for 10 years but on preferring the claim, the pension sanctioning authority has accepted the claim @ 20% for life. Accordingly, applicant is receiving disability element of pension @ 20% for life. The first grudge of the applicant is that PCDA (P) Allahabad should not have reduced his disability percentage and period of disability in the claim preferred for the period for which RSMB was held on 19.01.1993. Being aggrieved by the decision of PCDA (P) for reduction of disability element and period of disability, applicant has filed the instant O.A. for grant of disability element of Pension @ 50% for ten years starting from 30.09.1992 and rounding off it w.e.f. 01.01.1996. The last RSMB held on 15.02.1998 has assessed his disability @ 20% for 10 years but PCDA (P) Allahabad has accepted it to be 20% for life. Applicant has submitted representations dated 18.02.2014, 15.03.2017 raising his grievances but these were not suitably replied, hence he has filed the instant O.A.

3. Ld. Counsel for the applicant pleaded that the applicant was granted disability pension @ 60% for the period from 15.06.1978 to 29.09.1992. Thereafter, applicant's Resurvey Medical board was held at Military Hospital, Allahabad on 05.01.1993 and his disability was assessed @ 50% for 10 years but it was reduced by pension sanctioning authority to the tune of 20% for five years and it should be rounded off from 50% to 75% w.e.f 30.09.1992 onwards as granted by RSMB for 10 years. His further submission is that keeping in view of Hon'ble Apex Court judgment in Civil Appeal No. 164/1991, in the case of **Ex. Sapper**

Mohinder Singh vs. Union of India & Ors, respondents ought not to have reduced the disability percentage and period as in the aforesaid judgment it has clearly been held that the finding of a Medical Board, being an expert body, is to be given due weight, value and credence. He pleaded for grant of disability element of pension as assessed by RMB and RSMBs and rounding off of disability element of pension.

4. On the other hand, learned counsel for the respondents submitted that applicant has already been granted disability element of pension for the period from 14.06.1978 to 21.03.1980 by Asst. Director General (Pension), Office of the Director General Posts & Telegraphs, New Delhi vide order dated 15.11.1980. Re-Survey Medical Board (RSMB) of applicant was conducted on 05.01.1993 to decide his further disability which assessed his disability @ 50% for 10 years, but Chief Controller of Defence Accounts (CCDA) had reduced his disability to 20% for 05 years for the period from 30.09.1992 to 04.01.1998 vide PPO No D/E/431/1993 dated 05.08.1993. Thereafter, RSMB of the applicant was held at Military Hospital, Allahabad on 15.02.1998 in which his disability was assessed @ 20% for 10 years, but pension sanctioning authority i.e. PCDA (Pensions) Allahabad accepted his disability @ 20% for life w.e.f. 05.01.1998 vide revised PPO No D/RA/5171/1998 dated 03.08.1998. His further contention is that "assessment made by medical Board was only recommendatory in nature and subject to review/revision (Adjudication) by the competent authority i.e. Medical Advisor (Pension) at PCDA (P) Allahabad. His further averment is that Medical Adviser (Pension) at PCDA (P) Allahabad and representative of DGAFMS has the power to

overrule the findings of Invaliding or Re-Survey Medical Boards as per Army Headquarters letter dated 12.07.1951 and whose recommendation/adjudication is final, hence he is not entitled to disability element of pension as recommended by Medical Adviser (Pension). He pleaded for dismissal of O.A.

5. We have heard learned counsel for both sides and perused the material placed on record.

6. On careful perusal of the record and submission made by both parties, it transpires that applicant was granted disability element of pension @ 60% for two years (14.06.1978 to 13.06.1980), and further RSMB conducted on 05.01.1993 assessed his disability @ 50% for 10 years, but Chief Controller of Defence Accounts had reduced his disability to 20% for 05 years for the period from 30.09.1992 to 04.01.1998 vide PPO No D/E/431/1993 dated 05.08.1993. Thereafter, RSMB of the applicant was held at Military Hospital, Allahabad on 15.02.1998 in which his disability was assessed @ 20% for 10 years, but pension sanctioning authority i.e. PCDA (Pensions) Allahabad accepted his disability @ 20% for life w.e.f. 05.01.1998 vide revised PPO No D/RA/5171/1998 dated 03.08.1998. We are clear that rounding off of disability element of pension came into existence w.e.f. 01.01.1996 therefore, applicant is entitled to rounding off of disability element of pension w.e.f. 01.01.1996 onwards in terms of Hon'ble Apex Court judgment in the case of ***Union of India and Ors vs. Ram Avtar & Ors*** (Civil Appeal No 418 of 2012 decided on 10th December 2014). We also observe that the period 15.06.1980 to 30.09.1992 is not covered by any

RSMB report and hence it is not possible to assess the disability assessment for this period.

7. Further, applicant's disability element was assessed @ 50% for 10 years commencing from 30.09.1992 but respondents have reduced the disability percentage to 20% for five years in contravention to Hon'ble Apex Court judgment in the case of **Ex. Sapper Mohinder Singh** in Civil Appeal No 164 of 1993 decided on 14.01.1993 which has held that primacy of the opinion of a Medical Board is final. Hence the reduction in period of 10 years to 05 years and percentage from 50% to 20% by PCDA, Allahabad vide PPO dated 05.08.1993 is set aside. Accordingly the disability of 50% for 10 years assessed by RSMB is allowed for the period 30.09.1992 to 30.09.2002 with rounding of benefit to 75% allowed w.e.f. 01.01.1996.

8. Thus, in conspectus, keeping in view aforesaid discussions, applicant is firstly held entitled to 60% of disability element from 14.06.1978 to 13.06.1980 secondly to 50% disability element of pension for the period from 30.09.1992 to 31.12.1995 and rounded off 75% disability element for the period from 01.01.1996 to 30.09.2002, thirdly as the period 15.06.1980 to 30.09.1992 is not covered by any RSMB no disability element of pension can be admissible for this period and finally to 20% for life rounded off to 50% disability element of pension from 01.10.2002 onwards.

However, as per Hon'ble Apex Court judgment in the case of **Shiv Dass vs. Union of India & Ors**, reported in 2007 (3) SLR 445 the arrears of disability element of disability pension shall be restricted to three years from the date of filing of present O.A. which was filed on 26.03.2019.

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The respondents are directed to pay aforesaid disability element along with arrears within four months from today.

10. Default will invite interest @ 8% p.a.

11. No order as to costs.

12. Pending applications, if any disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : September, 2021

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Form No. 4
 {See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
RESERVED
Court No 1

O.A. No. 56 of 2021

Ex WO Ram Ashray Yadav
 By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
 By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>07.09.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Order pronounced today in the open Court. Original Application No. 56 of 2021 is allowed. For order, see our judgment passed on separate sheets. Misc. Applications, pending if any, shall be treated as disposed of accordingly.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p> <p>rspal</p>