

Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 649 of 2020

Friday, this the 24th day of September, 2021

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

Arjun Prasad Singh (No. 4257612) son of Bijendra Prasad Singh, resident of House No. 631/40, Kamta, Lucknow (Uttar Pradesh).

.... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Officer-in-Charge Records, The BIHAR Regiment, PIN-908765 C/O 56 APO.
3. Principal Controller Defence Account (Pension), Draupadi Ghat Prayagraj.
4. Chief Manager, State Bank of India, Main Branch, CPPC Cell, Kutchery Road, Prayagraj.
5. Branch Manager, State Bank of India, Ismailganj, Lucknow.

... Respondents

Ld. Counsel for the: **Shri Amit Jaiswal**, Advocate
Respondents. Central Govt Standing Counsel.

ORDER (Oral)

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

(a) Issue/pass an order setting aside the order/letter dated 17.10.2013 rejecting the claim of the applicant for disability pension for the period from 09.03.2003 to 29.08.2008 (Annexure No.1 to the Original Application), after summoning the relevant original records.

(b) Issue/pass an order directing the respondents to consider case of the applicant for providing the benefit of rounding off of the disability pension and provide the same from the date of discharge including arrears with interest and other consequential benefits of Ex-serviceman.

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

(d) Allow this Original Application with cost.

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 23.11.1978 and he was discharged from service on 30.06.2001 before completion of his terms of engagement of service under Army Rule 13 (3) III (v) and 13 (2A) of the Army Rules, 1954. Prior to discharge his Release medical Board was conducted on 30.03.2001 AT 165 Military Hospital and he was suffering from (i) **"HYPERTENSION-401"** which have assessed his disabilities @ 20% for five years (ii) **"OBESITY-278"** @

6-10% for five years has aggravated by stress and strain of military service and not related to service. Disability element of disability pension was granted by pension sanctioning authority PCDA (P), Allahabad from 01.07.2001 to 08.03.2003 Vide PPO No. DE/014703/2001 dated 11.02.2001. Thereafter, on 10.03.2003 applicant has been advised to provide details for processing his case for conduct of Re-Survey Medical Board to assess the present medical condition, but he did not do so. After that On 02.08.2008 applicant liaised with Records, The Bihar Regiment for conduct of his RSMB. Records, Bihar, Regiment approached Command Hospital, Lucknow vide letter dated 02.08.2008 for conduct of RSMB of applicant. After that applicant's case was further transferred to Base Hospital, Lucknow and his RSMB was carried out on 30.08.2008. Applicant's disabilities (i) "**PRIMARY HEYPERTENSION**" were assessed @ 30% for life (ii) '**OBESITY**' @ 6-10% for life w.e.f. 08.03.2003. Accordingly, applicant was granted disability element w.e.f. 30.08.2008 for life Vide PPO No. DE/Corr/2437/2008 dated 18.11.2008. Thereafter, applicant preferred a representation for grant of disability element for the interim period award from 09.03.2003 to

29.08.2008 which was rejected vide order dated 17.10.2013. Being aggrieved by applicant filed this O.A.

3. Ld. Counsel for the applicant submitted that applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore, any disability suffered by applicant after joining the service, should be considered as either attributable to or aggravated by military service and he should be entitled to disability pension. Ld. Counsel for the applicant further submitted that disability pension claim for the period from 08.03.2003 to 09.03.2008 of applicant has been rejected by pension sanctioning authority. Further submission of Ld. Counsel for the applicant is that applicant's disease is due to stress and strain related rigors of military service. He concluded by pleading for grant of disability pension to applicant.

4. On the other hand, Ld. Counsel for the respondents argued that since the applicant's claim for interim period award w.e.f. 09.03.2003 to 09.03.2008 has been rejected by PCDA (P), Allahabad, pension sanctioning competent authority as RSMB was not concluded on time which is not justified. Therefore, the competent authority

has rejected claim of disability element of disability pension. The ground of rejection of the claim is primarily due to the delay caused by applicant who did not appear on due date for RSMB, as well as delay in processing of his case to pension sanctioning authorities.

5. Heard Ld. Counsel for the parties and perused the material placed on record. We have also gone through the case and the rejection order of disability element of disability pension claim. The question before us is simple and straight i.e. – is the disability element of disability pension of applicant is entitled to or not on the ground that delay in conducting the RSMB as well as processing the claim pension to sanctioning authority i.e. PCDA (P), Allahabad?

6. We have noted that the applicant's disabilities (i) **"PRIMARY HEYPERTENSION"** @ 20% for five years (ii) **"OBESITY-278"** @ 6-10% for five years has been considered as aggravated by stress and strain of military service and not related to service. Disability element of disability pension was granted by pension sanctioning authority PCDA (P), Allahabad from 01.07.2001 to 08.03.2003 Vide PPO No. DE/014703/2001 dated 11.02.2001. Applicant's RSMB was carried out at Base Hospital, Lucknow on 30.08.2008 but which was actually

due in the month of March 2003 and his disabilities (i) **"PRIMARY HEYPERTENSION"** was assessed @ 30% for life (ii) **'OBEYSITY'** was assessed @ 6-10% for life w.e.f. 30.08.2008 and applicant was granted disability element w.e.f. 30.08.2008 for life Vide PPO No. DE/Corr/2437/2008 dated 18.11.2008. Disability element of disability of pension for the period from 09.03.2003 to 29.08.2008 was not paid to the applicant due to non conduct of RSMB in due time. Applicant's claim for interim period award w.e.f. 09.03.2003 to 29.08.2008 which was rejected by PCDA (P), Allahabad on the ground of delay in conducting RSMB is not justified, as the disability was assessed for life even after conduct of the delayed RSMB, implying thereby that the disability remained present during the intervening period between 08.03.2003 and 29.08.2008. Moreover in the RMB conducted in September 2008, it has been recorded by the Medical Board that the reassessed disability is **"30% for life w.e.f. 08.03.2003"**.

7. Thus in the result, the Original Application succeeds and is **allowed**. The impugned order dated 17.10.2013 is set aside. Delay in holding of RSMB of the applicant for the interim period i.e. 08.03.2003 to 29.08.2008 is condoned. The respondents are directed to grant

disability element of disability pension for the aforesaid period @ 30% for life which shall rounded off to 50% for life to the applicant. The whole exercise shall be completed within four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum.

10. No order as to costs.

11. Pending applications, if any, disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 24th September, 2021
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