

RESERVED**COURT NO.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 307 of 2015**Wednesday, this the 17th day of January, 2018**“Hon’ble Mr. Justice D.P. Singh, Member (J)
“Hon’ble Air Marshal BBP, Sinha, Member (A)”**Ex- Sgt Amit Kumar Pandey, S/o Shri Ram Asrey Pandey, H.N.
1196/64 COD Colony Road, Koyala Nagar Kanpur - 208 011(U.P.) **Applicant**Ld. Counsel for the : **Shri V.R. Chaubey, Advocate**
Applicant**Versus**

1. Union of India through the Secretary Ministry of Defence, South Block New Delhi.
2. The Chief of Air Staff, Air Force Head Office Air Force Head Office, Vayu Bhawan New Delhi - 110 106
3. Directorate of PA Air Headquarters, West Block - VI, R.K. Puram New Delhi - 110 066
4. CPDA, DrowpadiGhat Allahabad.
5. DGMS (Air) Air HQ RK Puram New Delhi - 110011.

----- Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal, Advocate,**
Respondents. **Sr. Central Government Standing Counsel**Assisted by : **Wing Cdr Sardul Singh, OIC Legal Cell.**

ORDER

“ Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. I have gone through and derived considerable benefits from the judgment of learned Brother. His Lordship has taken a view leaning in favour of the submissions advanced by the learned counsel for the Applicant. However, with utmost deference to my learned brother, I veer round to a view slightly different from the view taken by the learned brother. Although judgment was dictated in open Court by my learned brother, but since I differed slightly from the view taken by my learned brother, order to be passed by me was reserved to be delivered in open Court on 17.01.2018.

2. The facts in nut shell are that the Applicant was enrolled in the Indian Air Force on 04.08.1994 and was invalidated out from service on 21.09.2011 after rendering a little more than 17 years of service. Before discharge, he was examined by Invalidating Medical Board which assessed his disability i.e. ADULT ONSET PRIMARY DYSTONIA (TASK SPECIFIC WRITER’S CRAMP) as 20% for life. However, the Invalidating Medical Board opined the

disability to be neither attributable to nor aggravated by military Services. His claim for disability pension was rejected by Pension Sanctioning Authority vide communication dated 22.11.2011. Thereafter, the Applicant preferred First Appeal praying for medical pension and enhancement of disability percentage to at least 80%. However, the first appeal culminated in being rejected vide communication dated 21.08.2012. The Applicant then preferred second appeal in which the prayer made was that his disability may at least be assessed as 50% for enabling him to get civil job in disabled category. The Application which is described as Second Appeal is being reproduced below for ready reference.

*"770129-B Ex Sgt Amit Kumar Pandey ACHGD
Kanpur - 11
22 Oct 2012*

*DPA, Air HQ
Vayu Bhavan
New Delhi - 110 106*

**2nd APPEAL ON REJECTION OF DISABILITY CLAIM
EX - 770129 SGT AMIT KUMAR PANDEY**

Sir,

*1. Reference to your letter No. Air
HQ/41002/05/12/Sgt/PA-III, Dated 21 Aug 2012.*

2. I am disappointed for the rejection of my appeal for enhancement of disability percentage and pension which I was expecting from the service on the sympathetic assistance to service personal where I have given my 17 years of golden time of my life. As mentioned in your

letter that the exact cause of this disease is not known than how it was concluded that problem was neither attributable nor aggravated by service. Whereas I clearly stated and gave sufficient explanation in IMB that it started and aggravated during tour of my duty in Jodhpur where I performed prolonged working with high fever and despite of reporting sick twice, I was not given rest.

I joined service as a perfectly fit person and continued in the same category till last 16 years (A4G1). This problem started due to various service related stress and continuous prolong working hours. The problem aggravated to the extent that service boarded me out without thinking my future. It is very clear that this problem started and aggravated due to service reasons and fully attributable to service.

3. I was enrolled in IAF with a bond of 20 years of service. I thought that my family's life is now secured and I can provide good education to my children. But after 16 years of A4GI service, I have been diagnosed as disability "**Adult onset Primary Dystonia (Task Specific Writer's Cramp)**" and within a period of one year I was boarded out from service starting that I am not fit for further service in IAF with a meagre disability of 20% which does not look like to throw me out from service. Now I am living unemployed life with stamp of thrown out disabled soldier from service without minimum qualifying disability factor in civil (disability 40% or more).

4. It has been one year passed since then, and I could not find any job because of my discharge book which clearly states that I am a disabled person thrown out mercilessly from service. It is very surprising that service considers me a disabled person and refusing to give me minimum required disability percentage to get some job in civil, in disabled category.

5. In view of the above it is requested that I may be given at least 50% of disability so that I can get some civil job in disabled category to survive and look after my family and kids education. If my disability is not considered to be 50% or more then I humbly request that I may please be permitted to rejoin and continue my active service, as 20% disabled soldier can perform various service duties. I hope that service authorities will understand my plight and consider my case sympathetically.

Thanking you for your kind consideration and favourable action.

Sd/- x xx xx x x

Yours faithfully,

Ex Sgt Amit Kumar Pandey
H. No. 1196/64
COD Colony Road
Koyla Nagar
Kanpur – 208011 (U.P.)”

3. On receipt of the aforesaid application, the case was referred to DGHS (Armed Forces) who opined that since the individual has not sought for disability pension claim, and since appeal of the individual basically pertains to reassessment of disablement for securing civil job, he called upon to reply to the individual to report to any service hospital for fresh assessment and issue of disability certificate in terms of provisions of person with disabilities Act 1995. On the advice of DGHS (Armed Forces), Director of Air Veterans (DAV) wrote a letter to the 7 Air Force Hospital stating that individual has applied for disability percentage to the extent of 50% so that he could get job in civil on the basis of disability certificate after fresh assessment under the provisions of Person with

Disabilities Act 1995. The aforesaid letter being relevant is quoted below for ready reference.

" AF Net- 23297736

By Registered Post

Dte of Air Veterans

Air Headquarters

Subroto Park

New Delhi - 10

Air HQ/ 99801/5/ DAV (Med)

26 Feb 2013

7 Air Force Hospital (Registrar)

**MEDICAL BOARD FOR DISABILITY CERTIFICATE: EX
AIRMEN EX 770129 SGT AMIT KUMAR PANDEY**

1. *Reference is made to Note – 3 of DGHS (Armed Forces) dated 29 Jan 2013, last addressee letter No. Air HQ/99798/5/2nd Appeal/98/Sgt/DP/DAV dated 18 Feb 13 and individual's application dated 22 Oct 2013. (Copies annexed).*
2. *The above mentioned ex airman was invalided out of service vide AFmSF-16 dated 15 Jun 2011 for disability Adult Onset Primary Dystonia (Task Specific – Writer's Cramp). His disability was considered as neither attributable to nor aggravated by service and the percentage of disablement was assessed as 20% for life.*
3. *The individual vide his application mentioned in para 1 above has requested that he may be reassessed and his disability percentage may be given 50% so that he can get some job in civil in disabled category.*
4. *His case was put up to DGHS (Armed Forces) for considered opinion. DGHS (Armed Forces) vide note 3 has opined that the individual may report to any service hospital for fresh assessment and issue of disability certificate under the provision of persons with disabilities Act 1995.*
5. *It is requested to convene the Medical Board to reassess the percentage of disability and issue the*

disability certificate. A copy of IMB proceedings dated 15 Jun 2011 is annexed here with. The individual may be given appropriate appointment to report for conduction of Re-assessment Medical Board (RAMB).

Sd/ -x xxxxx

(Shital S Vachhani)

Wg Cdr

JD AV (Med)

Annexure: As stated

4. Accordingly disability certificate was issued by 7 Air Force Hospital in which disability was assessed as 50%.

5. The Applicant has invoked the jurisdiction of this Tribunal for grant of disability and making the disability as attributable to Air Force services and also for rounding off of disability from 50% to 75% on the basis of disability certificate which was obtained for purposes of securing some civil job. The aforesaid disability certificate was issued under the provisions of persons with disabilities Act 1995.

6. In the instant case, I have to take into reckoning two issues-

(i) Whether the disability as assessed by Invalidating Medical Board initially as 20% for life, which was opined to

be neither attributable to nor aggravated by Military service can be held to be attributable to Military service?

(ii) Whether a disability certificate issued under the provisions of Persons with disabilities Act,1995 for civil benefits by a Military Hospital can be utilised for claiming disability pension/rounding off, related claims by the personnel of Armed Forces?

7. I would take up the first issue which is whether disability is attributable to Air Force services or not? Both sides have been heard. The Court has also perused the material facts on record and also the averments made in the counter affidavit. The issue of attributability has been settled by the Apex Court in **Dharamvir Singh vs. Union of India &Ors, Ors** reported in **(2013) 7 Supreme Court Cases 316**,*the relevant portion of which being relevant is quoted below.*

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for

Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

8. In the light of the aforesaid judgment, since Invalidating Medical Board has not given reasons why the disability could not be detected at the time of initial enrolment, this Court has no option except to consider the disability as attributable to Military service.

9. Now I come to grips with second issue which relates to issue of disability certificate issued by 7 Air Force Hospital under the provisions of persons with disabilities Act 1995 being utilised for the purpose other than it was intended to. Whether the said disability/medical certificate can be utilised for the purposes of claiming higher disability pension on the basis of percentage given therein. This has prompted me to go through the authorising letter

dated 10.08.2009 from DGAFMS, which authorises issuance of such certificates under persons with disabilities Act 1995, by Military hospitals. The aforesaid letter being relevant is quoted below for ready reference.

" 16307/Dis Cert/DGAFMS/DG-3A dated 10.Aug 2009

OFFICE OF THE DGAFMS/DG-3A

EXTENSION OF PROVISION OF PERSON WITH DISABILITIES EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) (PWD), ACT 1995 TO ARMED FORCES PERSONNEL (INCL EX-SERVICEMENT AND THEIR DEPENDENTS

1. *Persons with Disabilities Act (Equal Opportunities, Protection of rights and Full Participation) (PWD) Act 1995 provides for various benefits to persons with disabilities. The benefits and other concessions available to persons with disabilities could be availed only on production of "Disability Certificate" issued by the District Medical Board.*

2. *Armed Forces personnel were not able to utilize the provision of the PWD Act even though many servicemen retired due to disabilities caused to them during active service. These disabled ex-servicemen had to approach District Medical Boards for the issue of such certificates, this usually entailed long waiting besides other admin difficulties. Therefore, in order to facilitate the issue of disability certificates to Armed Forces personnel (incl ESM) and their dependents, Ministry of Social Justice and Empowerment had referred a point to this Dte Gen to get AFMS Hosp auth so as to issue such certificates for Armed Forces Personnel (incl dependants). This Dte Gen had agreed with the proposal and progressed the case with the Min of social Justice & Empowerment after getting the concurrence of MoD.*

3. *Govt of India has since published the notification in part II Section IV of Gazette of India Extraordinary dated 18 Feb 2009 (copy att). A Med Bd duly constituted under the provisions of the notification will now be able to issue the certificates.*

These newly constituted Med Bd will be different from existing Release Medical Boards (RMB). The RMBs will however, continue to assess the individuals as per the "Guidelines for Medical Officers(Military Pension) 2002 (as amended)" for assessing disabilities for pension purposes.

4. The modalities of implementations of the PWD, Act 1995 in respect of Armed Forces personnel is as follows:-

- (a) Individual seeking certificate for any disability for self or dependent will approach the designated Disability Medical Boards with an application of request for issue of disability certificate. The applicant will also certify that no similar request have been made/certificate have been obtained through other military hospital/civil hospital (unless specifically asked to do so).*
- (b) The Disability Medical Board in designated AFMS hosp (as per notification) will examine the individual for the disability/ disabilities mentioned in para 1 of the notification.*
- (c) The disabilities will be assessed as per the percentage given in the PWD Act 1995 and Gazette notification (photocopy att).*
- (d) A copy of certificate will also be endorsed to the Record Office of the individual concerned so as to update personal records.*
- (e) Proper record will be maintained by the hospital in respect of all such certificates so issued, each applicant will be given a registration number against which the certificate will be accounted for.*

5. The disability certificate will have the same sancity as that of such certificates being issued by the present day District Medical Boards. It is therefore important that extreme care be exercised in examining and assessing disabilities because these certificates will have to stand the scrutiny of law. Therefore, uniformity and consistency in assessing the disabilities is essential.

6. *Suitable instructions may please be issued to concerned Hospital for implementing the above guidelines. Wide publicity may also be given to the contents of this letter so that Armed Forces personnel both (serving & retired) and dependents benefit from the provisions of PWD Act 1995.*
7. *This has the approval of DGAFMS.*

Sd/- x xxxxxx

(S.K. Kaushik)

Lt Col

Jt Dir AFMS (H

10. From a plain reading of the aforesaid letter of DGAFMS goes to show that the letter has been issued by way of a welfare measure which is intended to help Armed Forces Personnel to secure civil job or civil benefits under the provisions of persons with disabilities Act 1995. The contents of letter as contained in para 3 amplify that these newly constituted Medical Board under the Gazette Notification dated 18.02.2009 will be different from existing Release Medical Boards. The Release Medical Boards will however continue to assess the individuals as per the Guide-lines for Medical Officers (Military Pension) 2002 (as amended) for assessing disabilities for pension purposes.

11. In the light of the above clarification as contained in Para 3 of the aforesaid letter issued by DGAFMS, it crystallises that medical certificate issued under the provisions of persons with disabilities Act 1995, cannot be utilised for pensionary benefits of disability pension. To cap it all, the Apex Court in **Dharamvir Singh's case** has clearly stated that "*it is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27).*" By this reckoning, any certificate issued under the Persons with Disabilities Act 1995 by any Military Hospital cannot be utilised for disability pension related claims. There is no denying that the Applicant had made an application seeking enhancing disability percentage in order to enable him to secure civil job. It is also not denied that the certificate in question was issued under the Persons with disabilities Act 1995. The manner, in which the applicant has made use of the disability certificate, does go to show that the application made by the Applicant for issue of medical certificate enhancing his

disability to at least 50% was a ruse to beguile the authorities. In this view of the matter, the claim of the Applicant on the basis of disability/medical certificate issued under the provisions of persons with disability Act,1995 for enhancing his disability from 50% to 75% by way of rounding it off, cannot be sustained.

12. As a result of foregoing discussion, the initial disability as assessed by the Invalidating Medical Board as 20% for life is considered as attributable to Air Force Services and the same shall stand rounded off to 50% for life.

13. Thus, the O.A is partly allowed and the initial disability of the Applicant assessed by invalidating Medical Board which is 20% for life shall stand rounded off to 50% for life. The respondents are directed to give effect to this order within a period of five months from the date of receipt of a certified copy of this order. Additionally ends of justice will be met if a Review medical board is held by respondents and the petitioner is reassessed for his disability percentage as per Guide-lines for Medical Officers (Military Pension) 2002 within three months of this order. His further entitlement to disability pension

after the conduct of review medical board shall depend upon the outcome of review medical board. The applicant will be entitled to disability pension w.e.f three years prior to filing this OA. 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.

14. Before parting with the case, I feel called to say that considering that this Tribunal is lumbered with burgeoning number of cases where the medical certificates initially issued by way of welfare measure to benefit the Armed Forces Personnel to secure civil job or civil benefits under the provisions of persons with disabilities Act 1995 are being appropriated for disability pension related claims. We find that the applicants being ESM are claiming relief from both sides i.e. military disability pension as well as civil related benefits. Though the DGAFMS office letter is clear that disability certificates can't be used for military pensions however it is also clear that this aspect is not clear to the ESM who are applying for such certificates. Hence it is directed that DGAFMS shall issue appropriate directions to all Military Hospitals within next three months so as to make a clear distinction between Release Medical

Board, Invalidating Medical Board and Resurvey Medical Boards conducted to assess disability under guide to Medical Officers (Military (Pension) 2002 and the disability certificates issued under the provisions of persons with disabilities Act 1995 for the purpose of civil benefits. He shall also devise an SOP where the ESM applying for certificate of disability understand this difference clearly.

15. There shall be no order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: 17 January, 2018

MH/-