

Reserved
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 798 of 2023

Thursday, this the 27th day of February, 2025

“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Service No. 10437053-F Ex. Ptr. Arvind Kumar, son of Late Hakim Singh Yadav, resident of Village – Katra, Post Office – Abhinaypur, District – Etawah (U.P.)-206001.

.... Applicant

Ld. Counsel for the : **Shri V.P. Pandey**, Advocate
Applicant **Shri R.K. Singh**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer Incharge Records, The Parachute Regiments, PIN-900493, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj-211014.

... Respondents

Ld. Counsel for the: **Shri Arun Kumar Sahu**, Advocate
Respondents. Central Government Standing Counsel.

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”

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) *To issue/pass an order or direction to the Respondents to pay the disability pension w.e.f. 14 June 1995 to 07 November 2014.*
- (b) *To issue/pass an order or direction to pay arrears of disability pension occurred till date with interest of 18% per annum.*
- (c) *Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- (d) *Cost of the Original Application be awarded to the applicant.*

2. Briefly stated, applicant was enrolled in the 116 Infantry Battalion (Territorial Army) Parachute Regiment of Indian Army on 01.04.1992 and discharged from service deemed to be invalided out from Territorial Army (TA) Service with effect from 13.06.1995 in Low Medical Category under Territorial Army Rules 14(b) (iv) of Territorial Army Regulations, 1948 (Reprint 1996) after rendering 01 year and 244 days of embodied service. Before invalidation from service, the Invaliding Medical Board (IMB) held at Develali on 29.05.1995 assessed his disability ‘**SEVERE SENSORINEURAL DEAFNESS (LT) (V-67)**’ @20% for life as **aggravated by service**. However, the applicant’s claim for grant of disability pension was rejected by the Principal Controller of

Defence Accounts (Pensions), Allahabad vide letter dated 29.02.1997. In para 4.8 of the Original Application the applicant stated that he preferred First Appeals dated 20.02.1998, 04.07.2011, 28.03.2014, 24.08.2014, 09.05.2024, 07.05.2024, 08.11.2014. The Additional Directorate General (PS) issued a letter dated 05.05.2025 to the respondent No. 3 i.e. Officer Incharge Records whereby the Appellate Committee on First Appeal has held that due to inordinate delay in submitting appeal the applicant is eligible for grant of disability pension @50% for life w.e.f. 08.11.2014 i.e. the date of belated/delayed appeals. The respondent No. 3 i.e. Officer Incharge Records issued a letter dated 20.08.2015 to Chief Manager, CPPC Branch, SBI, Allahabad whereby applicant was granted Service Element @Rs.3500/- per month for life w.e.f. 08.11.2014 and disability element @1755/- per month for life w.e.f. 08.11.2014. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that although the applicant has been granted disability pension @50% for life with effect from 08.11.2014 but the applicant's disability pension ought to have also been granted w.e.f. 14.06.1995 to 07.11.2014 i.e. for about 19 years as such the applicant suffered great financial loss. He pleaded that the applicant be granted disability pension from the next date of invalidation i.e. 14.06.1995 to 07.11.2014 also.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that although the applicant's disability was assessed @20% for life as **aggravated by Military Service** and the applicant's claim for the grant of disability pension was forwarded to Principal Controller of Defence Accounts (P), Allahabad vide letter dated 09.07.1996. The Pension Sanctioning Authority rejected the applicant claim for the grant of disability pension stating that *"The disability pension claim of the individual has been adjudicated in consultation with Medical Advisor (Pensions), attached to this office and it has been decided that the disability viz. "SEVERE SENSORI NEURAL DEAFNESS" on account of which he has been released/invalid out of military service is neither attributable to/nor aggravated by military service and constitutional in nature and not related to service" accordingly no disability pension is admissible under the existing rules"* vide letter No. G-3/96/1327/XI dated 27 September 1996 which was communicated to the applicant vide letter dated 25.10.1996 and 31.12.1996. Thereafter, the applicant sent numerous letters/personal applications dated 20.02.1998, 16.03.1998 and 04.07.2021 regarding rejection of disability pension which were suitably reply by Records The Parachute Regiment vide letters dated 27.02.1998, 05.06.1998 and 31.10.2011 respectively. Thereafter, the applicant again sent personal application dated 09.05.2014 for filing of First Appeal which was replied vide letter

dated 19.07.2014 stating that *“this office has not received any type of appeal from your side since Sep 1996. Hence, you are not entitled for grant of disability pension and Records the Parachute Regiment not in position to process case for time barred sanction due to the delay period from limit of time barred as stipulated in IHQ of MoD (Army) letter No. B/40502/Appeal2009/AG/PS-4 (Imp-II) dated 17 August 2009”*. Thereafter, the applicant again preferred First Appeal against rejection of disability pension vide his personal application No. 10437053F/03/Personnel dated 24.08.2014. In reply, his First Appeal, First Appellate Authority directed that *“cases of appeal (1st & 2nd) which are filed after a long delay, the arrears of disability or war injury pension/special family pension should be paid from the date of appeal only”* vide *letter dated 03.06.2014*”. Furthermore, the applicant submitted his willingness to accept his disability pension from the date of First Appeal i.e. March, 2014 vide personal application dated 24.08.2014 along with undertaking certificate dated 24.08.2014 stating that *“I do hereby undertake that in case of my appeal is considered by the ACFA/SACP as a special case and accepted, I will have no objection to the grant of pensionary awards, if any, with effect from the date of the belated appeal or from the date of my discharge/retirement/invalidment, whichever is later”* countersigned by two witnesses”. It is also stated that *“I do hereby undertake that in case of my appeal is considered by the ACFA/SACP as a special case and accepted, I will have no*

objection to the grant of pensionary awards, if any, for the duration recommended by IMB/RMB with effect from the date of appeal and continuance of the same, if recommended by RSMB/RAMB to be held post appeal, with effect from the date of and based on the assessment of such RAMB/RSMB and I shall not claim arrears from the interim period in view of the inordinate delay in preferring the first appeal and further certified that "The contents of this undertaking have been explained to me in the language, which I understood before signing" duly countersigned by two witnesses.

Consequently, Records The Parachute Regiment raised observation as comprehensive delay report duly mentioning justification, valid reason and sequences of event including long gap of 18 years has been prepared and directed the applicant to forward the same that office for further necessary action vide letter dated 19.09.2014. Consequently, the First Appeal was forwarded to IHQ of MoD (Army), ADGPS, Adjutant General's Branch/PS-4 (Imp-II) vide letter dated 17.01.2015. Subsequently, the Appellate Committee on First Appeals (ACFA) vide their letter No. B/40502/070/2015/AG/PS-4 (Imp-II) dated 05.05.2015 accepted the disability @20% for life and further stated that "*petitioner is entitled for disability pension @50% for life with effect from date of belated/delayed appeal i.e. 08 November 2014 in terms of Para 72.2 of Government of India, Ministry of Defence letter No.1(2)/97/D(Pen-C) dated 31 January, 2001*". It was also clarified by the competent authority that "*due to inordinate delay in*

submitting appeal, the individual is eligible for grant of disability pension @50% for life with effect from 08 November 2014.”

Consequently, the claim was sent to PCDA (P), Allahabad vide letter dated 13.07.2015. Accordingly, the applicant was granted Service Element @Rs.3500/- per month and Disability Element @Rs.1755/- per month vide PPO No. D/0063/205 dated 12.08.2015. Thereafter, the applicant again preferred an Appeal dated 28.03.2014 for the grant of disability pension for intervening period i.e. 13.06.1995 to 07.11.2014 which was rejected vide letter dated 30.06.2016. He pleaded for dismissal of Original Application.

5. We have given our considerable thoughts to both sides and have carefully perused the records including Release Medical Board proceedings. and we find that the questions which need to be answered are two folds:-

- (a) Whether the Principal Controller of Defence Accounts (Pensions), Allahabad has authority to overrule the opinion of IMB?
- (b) Whether the applicant is entitled for the grant of disability pension for the intervening period i.e. 13.06.1995 to 07.11.2014?

6. This is a case where the disability of the applicant has been held as aggravated by military service by the IMB. The IMB

assessed the disability @20% for life. However, the opinion of the IMB has been overruled by Principal Controller of Defence Accounts (Pensions), Allahabad and the disability has been regarded as neither attributable to or aggravated by military service (NANA). The applicant preferred several applications which were rejected by the respondents. The applicant preferred First Appeal on 08.11.2014 which was accepted by the Appellate Committee on First Appeal and applicant was granted disability pension @50% for life with effect from the date of belated/delayed appeal i.e. 08.11.2014 and accordingly, PPO was issued.

7. The issue of sanctity of the opinion of a Release Medical Board and its overruling by a higher formation is no more Res Integra. The Hon'ble Supreme Court in the case of ***Ex. Sapper Mohinder Singh vs. Union of India & Others***, in Civil Appeal No.164 of 1993, decided on 14.01.1993, 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***, we are of the considered opinion that the decision of Principal Controller of Defence Accounts (Pensions), Allahabad over ruling the opinion of IMB held on 29.05.1995 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.”

8. Thus in light of the aforesaid judgment (supra) as well as IHQ of MoD (Army) letter dated 25.04.2011 it is clear that the disability assessed by IMB cannot be reduced/overruled by Principal Controller of Defence Accounts (Pension), Allahabad, hence the decision of Principal Controller of Defence Accounts (Pensions), Allahabad is void. Hence, we are of the opinion that the disability of the applicant should be considered as aggravated by military service as has been opined by the IMB.

9. It is undisputed that the applicant has been granted disability pension @50% for life with effect from date of belated/delayed appeal i.e. 08.11.2014.

10. We also observed that the applicant's First Appeal was processed only when he has given an undertaking to the effect

that in case of his appeal is considered by the ACFA/SACP as a special case and accepted, he will have no objection to grant of pensionary awards, if any, with effect from the date of the belated appeal or from the date of his discharge/retirement/ invalidment, whichever is later which was countersigned by two witnesses.

11. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

11. Although we have held that the applicant's disability should be considered as aggravated by military service as has been opined by the IMB held on 29.05.1995 which was later on accepted by the Appellate Committee on First Appeal with effect from the date of belated/delayed appeal i.e. 08.11.2014 submitted by the applicant but in view of undertaking given by the applicant

and also the law laid down by the Hon'ble Apex Court in the case of ***Shiv Dass vs. Union of India*** (supra) the applicant is not entitled for the payment of arrears of the disability pension for the intervening period i.e. from 14.06.1995 to 07.11.2014 as the applicant has filed the instant Original Application on 06.07.2023.

12. In view of the discussions made above, Original Application lacks merit and same is accordingly **dismissed**.

13. Pending application, if any, stands disposed of.

14. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated: 27 February, 2025

AKD/-