

Reserved Judgment
Court No. 1

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

O. A. No. 76 of 2019

Thursday, this the 28th day of March, 2019.

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Ex Sigmn Ramesh Chandra, son of Shri Mewa Lal, Resident of Village- Kalana, PO- Jehanabad, Tehsil Bindki, District- Fatehpur, U.P. - 262159

.....Applicant

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

Versus

1. Union of India and others through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff Integrated HQ of MoD (Army) DHQ PO, New Delhi- 110011
3. Chairman, Appellate Committee of First Appeals, MP-5&6, AGs branch, Integrated HQ of MoD (Army), West Block III, RK Puram, New Delhi – 110066.

.....Respondents

Ld. Counsel for the: **Ms Amrita Chakraborty,**
Respondents **Advocate**

ORDER

“(Per Hon'ble Mr Justice SVS Rathore, Member (J))”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for the following reliefs:

“(i) To direct the respondents to quash/ set aside the order of rejection of Appeal for disability pension,

(ii) To issue/ pass an order to the respondents to grant Applicant Disability Pension at 30% rounded off to 50% as rounding off policy from his date of Discharge 31.03.97 with interest.

(iii) To direct the respondents to pay all consequential benefits till date including paying ex-gratia amount of Rs 2,70,000/- (TWO LAKHS SEVENTY THOUSANDS) as applicable as per letter no. 2(2)/2011/(Pen/Pol) by Govt. of India, Ministry of Defence, Department of Ex-Serviceman Welfare dated 26th December 2011.”

2. As per Office report there was delay in filing this petition but the same has been condoned by this Tribunal vide order dated 30.01.2019.

3. The brief facts of the case as borne out from the pleadings are that the applicant was enrolled in the Indian Army on 08.03.1980 in medically fit condition and was discharged from service on 31.03.1997 after serving for 16 years and 329 days under Army Rule 13 Item III (iii) and IV of Army Rules, 1954. During the service while he was posted in Jammu, he fell ill and underwent medical treatment. The Release Medical Board (RMB) held before discharge considered the disability of the applicant “Primary Hypertension” as aggravated by military service and assessed it as 30% for two years. However the applicant was not granted disability pension. Applicant preferred petition for disability pension on 09.02.2017 but the same was rejected by the PCDA (P) Allahabad vide letter dated 20/22.02.2017 stating that the disability at 30% is neither attributable to nor aggravated by military service. The applicant filed representations time and again but he was informed that he is not eligible for disability pension. Hence the present O.A.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition and his disability has been considered as aggravated due to military service, by RMB, therefore the action of PCDA (P) Allahabad in overruling the recommendations of RMB as NANA without a second medical examination of the applicant, should be set aside in light of clear rulings on this matter by Hon'ble Apex Court. He pleaded that applicant should be granted disability pension.

5. The respondents have not filed any counter affidavit in this case. While rebutting arguments of learned counsel for the applicant, learned counsel for the respondents submitted that the applicant was discharged from service in low medical category for "Primary Hypertension" which was considered as neither attributable to nor aggravated by military service by PCDA (P) Allahabad and as such, he has rightly been denied disability pension. However, he has conceded that the Release Medical Board (RMB) had opined the disability as aggravated by military service. He concluded by stating that the higher formation PCDA (P) has over ruled the opinion of RMB and held his disability as NANA. As such the applicant is not entitled to disability pension.

6. We have heard Shri A. K. Singh, Ld. Counsel for the applicant and Ms Amrita Chakraborty, Ld. Counsel for the respondents and perused the record. The only question to be considered in this case is as to whether the disability of the applicant is attributable to military service or not.

7. The supremacy of Release Medical Board which has physically examined the individual has been clearly established vide Hon'ble Apex Court judgment in Civil Appeal No. 164/1991 ***Union of India in Ex. Sapper Mohinder Singh vs. Union of India***. The observation made in the decision of

Ex.Sapper Mohinder Singh (supra) being relevant 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.”

Thus in light of the law settled by Hon’ble Apex Court we agree with findings of RMB and set aside the orders passed by the respondents including PCDA (P) Allahabad on this matter and declare the disability of the applicant as aggravated by military service.

8. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of **K.J.S. Buttar vs. Union of India and Others**, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, **U.O.I. & Anr vs. K.J.S. Buttar, Sukhvinder Singh vs. Union of India & Ors.**, reported in (2014) STPL (WEB) 468 SC and **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

9. It is well settled that the claim for pension is based on continuing wrong and the 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 the law settled by the Hon'ble Apex Court is that if a petition for pension (disability pension in this case) is filed beyond a reasonable period, the relief prayed for may be restricted to a reasonable period of three years.

10. Since the medical board has assessed the disability of the applicant as 30% for two years, as such, keeping in view the judgment of ***Veer Pal Singh vs. Ministry of Defence & ors***, reported in (2013) 8 SCC 83, we feel that the case of the applicant should be recommended for Re-survey Medical Board to reassess further entitlement to disability element, if any.

11. In view of what has been stated above the O.A. deserves to be partly allowed and is hereby **partly allowed**. The impugned orders passed by the respondents are set aside. The applicant is entitled to disability pension @ 30% for two years from the date of his discharge. However, due to law of limitation he is not entitled for arrears of disability element for two years after discharge. He is already in receipt of service element since his discharge. The respondents are required to refer the applicant's case to Re-survey Medical Board for deciding further entitlement of his disability element. The respondents are also 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 cost.

(Air Marshal BBP Sinha)
Member (A)

Dated: March, 2019

JPT

(Justice SVS Rathore)
Member (J)

