

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 226 of 2019**Wednesday, this the 3rd day of March, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 9211403 Ex Hav Rajendra Singh
S/o Sri Parvi Singh
R.o Vill – Nagla Birbal, PO – Balti Keri
Distt – Mathura (UP)

..... Applicant

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

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi.
3. Officer-in-Charge, Records, MAHAR Regiment, Saugar (MP).
4. PCDA (Pension) Allahabad.

..... Respondents

Ld. Counsel for the Respondents : **Shri Arun Kumar Sahu**,
Central Govt Counsel.**ORDER**

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

- “(i) To quash CDA (P) Allahabad letter No. G-3/2001/341/XII dt 31.05.2001 and AG's Branch, Army HQs letter No B/40502/724/02/AG/PS-4(d) dated 17 Jan 2003 (Annexure A-3 and a-5 to the OA).

- (ii) To direct the respondents to grant 20% disability pension to the applicant duly rounded off to 50% as per the policy on the subject.
- (iii) Any other relief which the Hon'ble Tribunal may think just and proper may be granted to the applicant.
- (iv) Cost of the case may be awarded in favour of the applicant.

2. Briefly stated facts of the case are that the applicant was enrolled in the Army on 08.11.1968 and was discharged from service on 31.05.1992 (AN) in Low Medical Category under Army Rule 13 (3) III (i). The Release Medical Board (RMB) assessed his disability **“DOG BITE CLASS-III TRAUMATIC AMPUTATION OF (RT) INDEX FINGER THROUGH DISTAL IP JOINT” @ 20% for life** and opined the disability as attributable to military service. The disability pension claim of the applicant was rejected by Medical Advisor (Pension), attached to PCDA (P) Allahabad vide their letter dated 11.01.1993 viewing the disability of applicant as attributable to military service but reduced assessment of disability to less than 20% (11-14%) for five years. Accordingly, no disability pension was granted to the applicant. Thereafter, Re-survey medical Board was carried out at MH Agra on 15.11.2000 and his disability was assessed less than 20% (11-14%) for ten years. His claim for grant of disability pension was forwarded to PCDA (P) Allahabad which was rejected by order dated 31.05.2001. The applicant submitted an appeal dated 01.08.2001 which was also rejected by the First Appellate Committee vide order dated 17.01.2003. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contracted during the service, hence, it was assessed @ 20% for life and considered as attributable to Military Service by RMB. He submitted that the act of overruling the recommendations of RMB by higher competent authority or PCDA (P) Allahabad was wrong and should be set aside. He placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. UOI & Ors***, (Civil Appeal No. 4949 of 2010, arising out of SLP No. 6940 of 2010) and ***Sukhvinder Singh vs. Union of India & Others*** (Civil Appeal No 6505 of 2010) and pleaded that applicant be granted disability pension as per recommendations of RMB duly rounded off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. **“DOG BITE CLASS-III TRAUMATIC AMPUTATION OF (RT) INDEX FINGER THROUGH DISTAL IP JOINT”** has been regarded as 20% for life by RMB as attributable to military service. However, Medical Advisor (Pension), attached to PCDA (P) Allahabad has rejected the claim of the applicant stating that the disability of the applicant has been considered as attributable to military service but assessment of disability had been reduced to less than 20% (11-14%) for five years. Thereafter, two more RSMBs of the applicant have been conducted and the disability has been assessed less than 20% (11-14%) for five years and ten years

respectively. Therefore, in terms of Rule 173 of Pension Regulations for the Army 1961 (Part-1), applicant does not fulfil the conditions, hence, applicant is not entitled for disability pension. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB proceedings. The only question which needs to be answered is whether the Medical Advisor (Pension), PCDA (P) Allahabad has power to overrule the opinion of the RMB for the disability?

6. This is a case where RMB had conceded the disability of applicant **“DOG BITE CLASS-III TRAUMATIC AMPUTATION OF (RT) INDEX FINGER THROUGH DISTAL IP JOINT” @ 20% for life** as attributable to military service. However, PCDA (P) Allahabad has rejected the claim of applicant on the ground that disability of applicant has been viewed as attributable to military service but assessed below 20% (11-14%) for five years. However, it is clear that the higher competent authority i.e. PCDA (Pension) has not physically examined the applicant. The Hon’ble Apex Court has made it very clear that the opinion of the Medical Board cannot be overruled by higher chain of command without physical medical examination of the patient by a higher Medical Board. In this context the operative portion of the judgment of Hon’ble Apex Court in the case of ***Ex. Sapper Mohinder Singh vs. Union of India*** in Civil Appeal No 104 of 1993 decided on 14.01.1993 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.”

7. Thus, in sum and substance we set aside the decision of competent authority and PCDA (Pension) overruling the opinion of RMB without physical examination of applicant by a higher Medical Board and restore the original opinion and findings of RMB for grant of disability element and are of the considered opinion that the applicant was entitled to disability element for his disability **“DOG BITE CLASS-III TRAUMATIC AMPUTATION OF (RT) INDEX FINGER THROUGH DISTAL IP JOINT”** @ 20% for life from the date of discharge. Since benefit of rounding off is applicable w.e.f. 01.01.1996 as per Govt of India, Ministry of Defence letter dated 31.01.2001, hence applicant being discharged from service on 31.05.1992, is eligible for the benefit of rounding off w.e.f. 01.01.1996 only.

8. Resultantly, the O.A. deserves to be allowed, hence **allowed**. The impugned orders passed by the respondents and PCDA (P) Allahabad are set aside and the original opinion of RMB is restored. The applicant's disability **“DOG BITE CLASS-III TRAUMATIC AMPUTATION OF (RT) INDEX FINGER THROUGH DISTAL IP JOINT”** is to be considered as attributable to military service @ 20%

for life in line with RMB recommendations. The applicant is entitled to disability element @ 20% for life from the date of discharge from service duly rounded off to 50% from 01.01.1996 only. The respondents are directed to grant disability element @ 20% for life from the date of discharge from service and @ 50% from 01.01.1996 only. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrear of disability element will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 10.01.2019. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

	(Vice Admiral Abhay Raghunath Karve)	(Justice Umesh Chandra Srivastava)
	Member (A)	Member (J)
Dated:	March, 2021	
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