

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 551 of 2018**Monday, this the 1st day of March, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)6324151 Ex Sigmn Vijay Singh Kurmi
S/o Late Shri Man Singh
Vill – Dhanaura, Post – Titra, Khalilpur,
Tehsil – Kunch, Dist – Jalaun (UP) PIN-285205

..... Applicant

Ld. Counsel for the Applicant: **Shri Rohitash Kumar Sharma**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.
2. The Chief of Army Staff, Integrated Headquarters of MoD (Army), DHQ PO, New Delhi-110011.
3. Additional Director General Personnel Services (PS-4), Integrated HQ of Ministry of Defence (Army) DHQ PO, New Delhi-110011.
4. The Records Signals, PIN-908770, C/o 56 APO.
5. Controller Defence Account (Pension), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh**,
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:-

- “(a) Call for the records based on which the Respondents have rejected the request of the Applicant for the disability

pension including the impugned findings of Invalid Medical Board proceeding and orders including order dated 03.04.2018 and 24.07.1969 denying the disability pension to the applicant.

- (b) Direct the respondents to assess the percentage of disability and pay disability pension to the applicant as assessed by the IMB after applying the principles of broad banding w.e.f. 26.11.1969 along with arrears with interest @ 18% per annum.
- (c) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.”

2. Briefly stated facts of the case are that the applicant was enrolled in the Army on 25.02.1965 and was invalided out from service on 25.11.1969 in low medical category under Army Rule 13 (3) III (iii). The Invaliding Medical Board (IMB) assessed his disability **“HANSEN’S DISEASE (LEPROSY TUBERCULOID) 030” @ 40%** (duration not given in medical papers filed by the applicant by way of supplementary affidavit) and opined the disability as attributable to military service. The disability pension claim of the applicant was forwarded to PCDA (P) Allahabad by Signals Records vide letter dated 09.03.1970. However, PCDA (P) Allahabad rejected the claim vide letter dated 17.04.1970 stating that **“petitioner’s disability is not attributable to military service and does not fulfil the conditions namely that it existed before or arose during military service and been or remains aggravated thereby”**. However, AFMSF-16 of the applicant has not been returned by the PCDA (P) Allahabad for further retention with Signals Records. The applicant preferred applications dated 27.02.2018 and 12.04.2018 for grant of

disability pension but the same were rejected by the respondents. 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 contacted during when he was posted in Jammu & Kashmir from 25.08.1966 to 30.04.1969. He suffered severe injury on 06.03.1966 while performing military duty. Court of Inquiry was conducted and the injury was accepted, sustained on bonafide military duty. Hence, it was assessed @ 40% and considered as attributable to Military Service by Invaliding Medical Board (IMB). In this regard, applicant has filed supplementary affidavit annexing therewith copy of “**Details of Becoming Non Effective**” (For cases of invalidment only) in which disease/injury – “**HANSEN’S DISEASE (LEPROSY TUBERCULOID) 030**” has been assessed @ 40% with recommendation regarding attributability/aggravation – YES, meaning thereby it is attributable to military service by IMB.

4. Learned Counsel for the applicant further submitted that the act of overruling the recommendations of IMB 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 IMB @ 40% duly rounded off to 50% for life.

5. On the other hand, Ld. Counsel for the respondents submitted that disability of the applicant i.e. **“HANSEN’S DISEASE (LEPROSY TUBERCULOID) 030”** has been regarded as not attributable to military service by PCDA (P) Allahabad and accordingly, disability pension of the claim of the applicant has been rejected, however no medical papers of the applicant are available with Signals Records. 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.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the medical paper (Details of Becoming Non-Effective) filed by the applicant. The only question which needs to be answered is whether the PCDA (P) Allahabad has power to overrule the opinion of the IMB for the disability?

7. This is a case where IMB had conceded the disability of applicant **“HANSEN’S DISEASE (LEPROSY TUBERCULOID) 030”** @ 40% 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 not attributable to military service. 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.”

8. Thus in sum and substance we set aside the decision of competent authority and PCDA (Pension) overruling the opinion of IMB without physical examination of applicant by a higher Medical Board and restore the original opinion and findings of IMB for grant of disability pension and are of the considered opinion that the applicant was entitled to disability pension for his disability **“HANSEN'S DISEASE (LEPROSY TUBERCULOID) 030”** @ 40% (presuming it 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 invalided out from

service on 25.11.1969, is eligible for the benefit of rounding off w.e.f. 01.01.1996 only.

9. 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 IMB is restored. The applicant's disability "**HANSEN'S DISEASE (LEPROSY TUBERCULOID) 030**" is to be considered as attributable to military service @ 40% for life in line with IMB recommendations. The applicant is entitled to disability pension @ 40% 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 pension @ 40% for life from the date of discharge and @ 50% for life 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 14.05.2018. 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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