

Court No. 1
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No.789 of 2021

Monday, this the 21st day of March, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Atma Ram (No. 14506412W Ex. Naik) S/o Sri Gaddu Prasad,
R/o House No. 671 Atma Niwas Karmer Road Rajendra Nagar,
Orai, District-Jalaun (U.P)

.... Applicant

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

Versus

1. Union of India, through Secretary Ministry of Defence, South Block, Delhi-110011.
2. The Office Incharge EME Records Pin -900453 C/o 56 APO.
3. Principal controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

... Respondents

Ld. Counsel for the Respondents: **Shri D.K.Pandey**, Advocate
Central Govt Counsel.

ORDER (Oral)

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:-

(i) This Hon'ble Court may graciously be pleased to direct the respondents to give disability pension along with its arrears disability "PULMONARY TUBERCULOSIS" 19% (Permanent) for life."

(ii) This Hon'ble Court may further be pleased to pass such other and /or further order as deem fit, proper and necessary in the circumstances of this case.

(iii) Award costs to the applicant.

2. Briefly stated, applicant was enrolled in the Indian Army on 10.08.1971 and was invalided out of service w.e.f. 20.08.1986 in low medical category under Rule 13 (3) Item III (iii) (a) of the Army Rules, 1954. After initial investigation the applicant was diagnosed to be suffering from 'Pulmonary Tuberculosis' w.e.f. 14.11.1985. He was transferred to the Military Hospital, Namkum, where he was treated as an indoor patient from 13.01.1986 to 22.01.1986. An Invaliding Medical Board (IMB) was held on 09.08.1986 which assessed his medical disability @ 100% for one year attributable to military service. Accordingly, disability pension consisting of service element w.e.f. from next date of invalidation and disability element was granted. Thereafter, after retirement his various re-assessment medical boards were carried out and disability element was granted till such his disability element was @ 20%. On 08.12.2003 his re-assessment medical board was held which assessed his disability @ 15-19% for life and his disability element was stopped being the disability below 20%. In the year 2012 the applicant approached medical authorities for holding re-survey medical board through Zila Sainik Board, as such his medical board was held at Military Hospital, Jhansi on 19.03.2013 which assessed his disability @ 15-19% i.e. below 20%. The applicant is in receipt of service element and he has filed this O.A. for grant of disability element of pension. The case

of the applicant is that the recommendation of RSMB dated 19.03.2013, assessing his disability below 20% is not based on any cogent reasons and therefore deserves to be set aside and the case of applicant for grant of disability element of pension deserves to be considered on humanitarian ground as well as keeping in view the benevolent policies of the Government besides legal aspects. Thus to sum up, the case of the applicant is that the applicant was granted disability pension @100% for two years and after RSMB his disability was found to be less than 20% and therefore, the disability element was rejected and the applicant is in receipt of only service element. His prayer is to set aside the report of RSMB and grant him disability element also.

3. On the other hand, learned counsel for the respondents has submitted that when the disability of the applicant was assessed at less than 20%, the respondents have rightly stopped the disability element of pension and only service element is being paid to the applicant. He further submitted that the applicant is not entitled to disability element in terms of para 173 of Pension Regulations for the Army, 1961 (Part-I). In support of his contention learned counsel for the respondents has relied upon the Hon'ble Apex Court judgment rendered in civil Appeal No 5678 of 2009 arising out of SLP (C) No 23727/2008, **Secretary of Ministry of Defence & Ors vs Late Sep Damodaran AV** which laid down that the medical board is an expert body and its opinion is to be given due weightage, value and credence. He further

submitted that in the instant case, since the re-assessment medical board, being an expert body and who physically examined the applicant had re-assessed the disability of the applicant twice at less than 20%, by giving due weightage, value and credence to the findings and opinion of the competent medical authority, the respondents had rightly discontinued the disability element to the applicant w.e.f. 10.02.1998. He pleaded for dismissal of O.A.

4. After hearing learned counsel for the parties and from a perusal of the material brought on record, we are of the view that the learned counsel for the applicant has not brought to our notice any document or medical paper/authority showing that the assessment of the disability of the applicant by the RSMB below 20% was incorrect and is violative of the policy prescribed for that purpose. Thus, the only point that remains to be considered is whether the stoppage of the disability element of pension by the respondents was legal or not. This point has been considered by the Hon'ble Apex Court in the case of **Balbir Singh vs. Union of India & Ors** in Civil Appeal No. 3086 of 2012 decided on 08.04.2016 wherein a similar question was involved. We would like to quote the relevant part of the judgment, which reads as under :-

“It is not in dispute that the appellant was discharged from service/invalidated out of service on account of 100% permanent disability suffered by him during the course of service. It is also not in dispute that the said disability was held to be attributable to military service. That the disability was subsequently reduced to fall below 20% is also common ground. Inasmuch as the

authorities stopped the disability pension, they committed no wrong. Stoppage of the disability pension did not however mean that the service element of the pension could also be stopped. That is evident from the provisions of Regulation 186 which reads as follows:-

“186 (1) An individual who is invalided out of service with a disability attributable to or aggravated by service but assessed at below 20 per cent shall be entitled to service element only. (2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per cent. He shall however continue to draw the service element of disability pension. The Tribunal was therefore justified in restoring the service element of the pension in favour of the appellant.”

5. Therefore, in view of Regulation 186 mentioned above and keeping in view the judgment of Hon'ble Apex Court, we do not find any illegality or irregularity in the order passed by the respondents stopping the disability pension of the applicant. We are of the view that the applicant is not entitled to disability element of pension w.e.f. the date his disability was assessed below 20%.

6. In view of the above, O.A. lacks merit, and is hereby **dismissed**.

7. No order as to costs.

8. Miscellaneous applications, pending if any, shall stand disposed of.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 21st March, 2022

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