

**RESERVED**

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

**ORIGINAL APPLICATION No. 537 of 2018**

Friday, this the 16<sup>th</sup> day of November, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)  
Hon’ble Air Marshal BBP Sinha, Member (A)”**

Lalta Prasad, son of Late Sampat Pandey, resident of village Kandohiya, Post Tikar Mafi, District Sultapur (UP).

**..... Applicant**

Counsel for the applicant : Sri R. Chandra, Advocate.

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), DHQ Post Office, New Delhi-11
3. The Officer-in-Charge, Signal Records, Post Bag No. 05, Jabalpur – 482001 (M.P.)
4. The Chief Controller, Defence Accounts, Draupadi Ghat, Allahabad-14 (U.P.).

**.....Respondents**

Counsel for the Respondents : Shri Amit Jaiswal,  
Additional Central Government  
Standing Counsel

**ORDER****“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”**

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

*“(I) Hon’ble Tribunal may be pleased to direct the respondents to grant disability element from 26/05/1978 and it should be rounded to 50 percent in terms of Policy dated 31.01.2001 and Hon’ble Apex Court order for life along with the interest at the rate of 18% per annum.*

*“(II) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. At the very outset it may be noticed that the issue involved in the present O.A. relates to payment of disability element of disability pension, as such, the delay in filing the O.A. was condoned vide order dated 14.11.2018. Since the learned counsel for the applicant submitted that he does not intend to file rejoinder affidavit to the counter affidavit filed by the respondents, as such, with the consent of learned counsel for the parties, the O.A. was heard at the admission stage itself.

3. The factual matrix of the case as borne out from the record is that the applicant was enrolled in the Indian Army on 17.10.1964. Having rendered 07 years and 350 days of service, he was invalided out from service on 30.09.1972 in low medical category EEE (Permanent) under Army Rule 13 (3) III (iii) due to disability ‘PLEURISY WITH EFFUSION (OLD) LEFT (511) and NEUROSIS (300). The Invaliding Medical Board (IMB) held on 07.07.1972

opined the disability PLURISY WITH EFFUSION (OLD) LEFT (511) attributable to service and assessed it at 11 – 14 %. The IMB further opined the disability NEUROSIS (300) to be aggravated by military service and assessed it at 20%. The duration of both the disabilities was assessed for two years. The disability claim of the applicant was accepted by the Principal Controller of Defence Accounts (Pension), Allahabad and was notified as temporary disability element of disability pension @ 40% for two years. Thereafter, Re-survey Medical Boards (RSMB) was conducted with respect to the applicant granting disability element to the applicant. RSMB was again conducted with regard to assessing the disability of the applicant on 04.02.1978 for both the diseases which assessed the composite disability of the applicant @ 20% and the duration of assessment was opined by the RSMB to be “permanent w.e.f. 26.03.1978” as is clear from Annexure CA-5 annexed along with the counter affidavit filed by the respondents. However, the PCDA (P), Allahabad rejected claim of disability pension of the applicant on the ground that the disability percentage was reassessed by the statutory body of the pension sanctioning authority at less than 20% with effect from 26.03.1978. Thus the disability pension being paid to the applicant was stopped from said date. Being aggrieved, the applicant preferred belated appeal on 14.03.1997 which did not see the light of the day. Hence, the present O.A.

4. Learned Counsel for the applicant vehemently argued that the applicant was recruited in a fit state at the time of enrolment

and has no personal or family history of said ailments. He further submitted that it is the admitted case of the respondents that the diseases suffered by the applicant were attributable to and aggravated by military service and since the disability was assessed by the RSMB to be permanent, as such, the percentage of disabilities could not be reduced by the PCDA (P) Allahabad from 20%. He further submitted that as per the policy on the point of rounding off of disability pension, the disability @ 20% as assessed by the RSMB deserves to be rounded off to 50%.

5. Refuting arguments of learned counsel for the applicant, learned Counsel for the respondents argued that though the RSMB has considered disability due to PLEURISY WITH EFFUSION (OLD) LEFT (511) as attributable to military service and the second disability NEUROSIS (300) of the applicant as aggravated by service and the composite disability has been assessed as 20% for life, but the pension sanctioning authority i.e. PCDA (Pension) Allahabad in consultation with Medical Advisor (Pension) attached to their office has assessed the percentage to be less than 20% as such in view of Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I), since the PCDA (P), Allahabad has reassessed the percentage of both the disabilities with effect from 26.03.1978 to be less than 20%, as such, the applicant is not entitled to the disability pension. The claim for disability pension has been rightly rejected in accordance with Para 173 of the Pension Regulations (supra).

6. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also perused the record.

7. In the case in hand, the last RSMB held on 04.02.1978 has assessed both the disabilities of the applicant @ 20%. However, the medical representative of the PCDA (P) Allahabad has over-ruled the opinion of the RSMB. It is admitted fact that said medical representative has not physically examined the applicant. Hon'ble the Supreme Court in the case of ***Ex Sapper Mohinder Singh vs. Union of India*** (Civil Appeal No. 104 of 1993, decided on 14.01.1993 has held that opinion of the Medical Board cannot be over-ruled by higher chain of command without physical medical examination of the claimant. The relevant portion of the decision (supra) may be excerpted as under:-

*“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. From the averments made in the counter affidavit, it is evident that the RSMB held on 04.02.1978, assessed the

composite assessment for both the diseases @ 20%. The respondents along with the counter affidavit have annexed letter of the Records Signals dated 17.06.2017 in reference to petition of the applicant dated 14.03.2017 wherein the respondents have admitted that the Medical Board has assessed applicant's disability @ 20% for life. It is not the case of the respondents that the Medical representative of the PCDA (P) Allahabad had medically examined the applicant while reducing the percentage of disability suffered by the applicant. Thus, the stand taken by the respondents for stopping the disability pension of the applicant is per se wrong and cannot be sustained.

9. So far as applicant's claim for admissibility of benefit of rounding off of disability pension is concerned, the applicant was advised by the PCDA (P), Allahabad to prefer an appeal if he is not satisfied with the decision regarding stoppage of disability pension, but the applicant since 1978 did not prefer any appeal. As per pleadings in the O.A., the applicant belatedly preferred an appeal on 14.03.2017. Thus, we are of the opinion that the benefit of rounding off of the disability pension from 01.01.1996 in view of Government of India, Ministry of Defence letter dated 31.01.2001 cannot be granted to the applicant. However, considering the peculiar facts and circumstances of the present case, we are of the view that interest of justice demands that the applicant may be made entitled to the benefit of rounding off from three years prior to the filing of the present O.A.

10. In view of the discussion held above, this O.A. deserves to be allowed and is hereby **allowed**. The applicant is held entitled to disability element of disability pension. The impugned order passed by the respondents discontinuing payment of disability element to the applicant is set aside. The respondents are directed to grant disability pension to the applicant @ 20% for life which shall be rounded off from 20% to 50% for life from three years prior to the filing of the present Original Application, i.e. 22.06.2018. The respondents shall comply with this order within four months from the date of receipt of a certified copy of this order, failing which the respondents shall be liable to pay interest @ 9% per annum to the applicant on the amount accrued till the date of actual payment.

No order as to cost.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice SVS Rathore)**  
**Member (J)**

Dated : November 2018.

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