

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 307 of 2015

Tuesday, this the 16th day of October, 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

Ex-Sgt Amit Kumar Pandey
S/o Shri Ram Asrey Pandey
H. No. 1196/64 COD Colony Road, Koyla Nagar
Kanpur – 208011 (UP)

..... Applicant

Versus

1. Union of India through the Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Chief of Air Staff, Air Force Head Office,
Vayu Bhawan, New Delhi – 110106.
3. Directorate of P A, Air Headquarters
West Block-VI, R.K. Puram
New Delhi – 110066.
4. C P D A, Draupadi Ghat, Allahabad.
5. DGMS (Air), Air HQ RK Puram, New Delhi – 110011.

..... Respondents

Ld. Counsel appeared for the Applicant	-	Shri V.R. Chaubey Advocate
Ld. Counsel appeared for the Respondents	-	Mrs. Deepti Prasad Bajpai Central Government Counsel

ORDER

1. This Original Application was earlier heard by the Bench comprising of Hon'ble Mr. Justice D.P. Singh (Member J) (since retired) and Hon'ble Air Marshal BBP Sinha (Member A). Hon'ble

Member (J) vide his order dated 03.01.2018 allowed the O.A. and issued the following direction :-

“17. In view of the above, O.A. deserves to be allowed. Accordingly, O.A. is allowed and the impugned orders dated 21.09.2011 and 21.08.2012 are set aside with all consequential benefits.

Applicant is further held entitled to 50% disability pension, which is rounded off to 75% in view of settled proposition of law (supra). The applicant shall be paid disability pension @ 20% from the date of his discharge till his re-survey medical board and @ 50% from the date the re-survey medical board has given its opinion i.e. 23.04.2013 with all consequential benefits within four months from today, failing which applicant shall also be entitled for interest @ 10% till the date of actual payment of amount in question.

Since the applicant suffered mental pain and agony on account of inaction of the respondents in implementation of order passed by the second appeal committee, as held herein above, he is also held entitled for the cost, which is quantified at Rs. 50,000/- and shall be released to the applicant through cheque.”

2. However, on the said date while the Hon’ble Member (A) has opined the applicant’s disability to be attributable to military service recommended it to be rounded off to 50% for life. He has also held a dissenting view on certain issues and he has differed from Brother, Justice D.P. Singh and proposed to deliver a separate judgment. Thereafter, vide order dated 17.01.2018, Hon’ble Member (A) has passed a separate judgment and partly allowed the O.A. with the following directions :-

“13. Thus, the O.A. is partly allowed and the initial disability of the Applicant assessed by invalidating Medical Board which is 20% for life shall stand rounded off to 50% for life. The respondents are directed to give effect to the order within a period of five months from the date of receipt of a certified copy of this order. Additionally ends of justice will be met if a Review Medical Board is held by

respondents and the petitioner is reassessed for his disability percentage as per Guide-lines for Medical Officers (Military Pension) 2002 within three months of this order. His further entitlement to disability pension after the conduct of review medical board shall depend upon the outcome of review medical board . The applicant will be entitled to disability pension w.e.f. three years prior to filing this OA. 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.”

3. Since there was a difference of opinion, therefore following four questions were framed and the record was forwarded to Hon’ble Chairperson, Armed Forces Tribunal, Principal Bench, New Delhi for appropriate orders. Thereafter Hon’ble Chairperson vide its order dated 13.02.2018, in exercise of the power conferred under Section 28 of the Armed Forces Tribunal Act, 2007, has referred this matter to the undersigned as 3rd Judge. The questions framed were as under :-

(1) Whether the judgment of the coordinate Bench (Armed Forces Tribunal, Regional Bench, Kolkata) is not binding on the Armed Forces Tribunal, Regional Bench, Lucknow and the Tribunal has got right to take adverse view than what has been settled against the doctrine of finality?

(2) Whether Medical Board has got right to give second opinion contrary to the first opinion for enhancement or reduction of medical ailment in pursuance to Circular issued by the Indian Air Force/Army, for some extraneous reasons.

(3) Whether the conduct of the Medical Officer working in the Armed Forces shall not be governed by Indian Medical Council Act, 1956 and the rules and regulations framed thereunder? Whether the Medical Officers of the Armed Forces have to follow the instructions which may be given in contravention to the provisions of Indian Medical Council Act, 1956 and the rules and regulations framed thereunder?

(4) Whether by executive instructions, the Armed Forces have right to regulate conduct of Medical Officers of the Armed Forces to do certain thing which is not ethical and goes against the standards of profession provided by the Indian Medical Council Act, 1956 and the rules and regulations framed thereunder?

4. In brief, the facts necessary for disposal for the case may be summarized as under :-

The facts in nutshell are that the applicant was enrolled in the Indian Air Force on 04.08.1994 and was invalidated out of service on 21.09.2011 after rendering a little more than 17 years of service. Before discharge, he was examined by Invalidating Medical Board which assessed his disability i.e. ADULT ONSET PRIMARY DYSTONIA (TASK SPECIFIC WRITER'S CRAMP) as 20% for life. However, the Invalidating Medical Board opined the disability to be neither attributable to nor aggravated by military services. His claim for disability pension was rejected by Pension Sanctioning Authority vide communication dated 22.11.2011. Thereafter, the applicant preferred First Appeal praying for medical pension and enhancement of disability percentage at least to 80%. However, the first appeal was rejected and was communicated to the applicant vide communication dated 21.08.2012. The Applicant then preferred second appeal in which the prayer made was that his disability may be assessed at least as 50% for enabling him to get civil job in disabled category.

5. Learned counsel for the applicant has argued that the applicant was released by Release Medical Board (RMB) which has assessed the disability pension @ 20% for life, but he has not been paid disability pension. It is submitted that first appeal was preferred, challenging the findings of the RMB, which was dismissed. Thereafter, second appeal was preferred. On the basis of which, a fresh medical board was constituted which assessed the disability of the applicant @ 50% for life, therefore the applicant is entitled to disability pension @ 50% which is to be rounded off to 75%.

6. On behalf of the respondents, it is submitted that RMB has assessed the disability of the applicant @ 20% for life and opined that the disability is neither attributable to nor aggravated by military service. His first appeal has been rejected and in his second appeal the applicant has specifically requested for 50% disability for the purpose of civil employment. Hence he has been issued with a disability certificate as per 'Persons with Disability Act, 1995'. However, it has been argued that the applicant is not entitled to disability pension on the basis of Disability Certificate. The submission of the learned counsel for the respondents is that Disability Certificate is issued to the applicant for an entirely different purpose. In support of his submission, he has placed reliance by producing Notification dated 10.08.2009. It is submitted that such a disability certificate cannot be made basis for grant of disability pension.

7. In view of the aforementioned factual background, the following points referred by the Tribunal have to be considered.

8. The first point is whether the judgment of the coordinate Bench (Armed Forces Tribunal, Regional Bench, Kolkata) is not binding on the Armed Forces Tribunal Regional Bench, Lucknow.

9. It is very surprising that the reference has been made to a judgment of AFT, Regional Bench, Kolkata, however no details of the said case, citation or date of decision has been mentioned in the question so framed. Therefore, in absence of the particulars of the case, no definite opinion can be expressed.

10. However, learned counsel for the applicant has produced a judgment by AFT, Regional Bench, Kolkata in O.A. No. 113 of 2013

decided on 07.08.2015. I have perused the said judgment, which does not apply in the fact of the instant case. In that case point involved was whether disability suffered during Annual Leave shall be deemed to have a causal connection with the Army duty. However, no such point is involved in this case. Therefore, in view of want of particulars of the case referred in the question framed, it is not possible to express any opinion on this point.

11. Reply to question No. 2. There is no dispute to the fact that disability certificate to which the applicant has placed reliance, is not the report of either IMB, RMB or RSMB.

12. It is true that apparently it appears to be unacceptable that the RMB/IMB has assessed the disability of the applicant to be 20% for life but another medical board assessed the disability of the applicant, to be 50%. Admittedly, the purpose of both medical boards were entirely different. Apart from it, in second appeal, the applicant has made prayer before the competent authority that his disability be assessed @ 50% for getting the benefit of civil employment. Para 5 of the second appeal is reproduced as under :-

“5. In view of the above it is requested that I may be given at least 50% of disability so that I can get some civil job in disabled category to survive and look after my family and kids education. If my disability is not considered to be 50% or more then I humbly request that I may please be permitted to rejoin and continue my active service, as 20% disable soldier can perform various service duties. I hope that service authorities will understand my plight and consider my case sympathetically.”

13. Thus, the applicant himself made prayer in the second appeal that if his disability is not considered to be @ 50% or above, then he shall not be able to get any job in civil in that category. Thus, the purpose of

the getting certificate of 50% disability by the applicant, was to get civil job in disabled category to survive and to look after his family.

14. It appears that on the request of the applicant a different and sympathetic view was taken by the Board and disability was certified to be 50%. The purpose of the policy and guidelines to assess the disability in RMB/IMB/RSMB are different in comparison to the policy in relation to the granting certificate of the disability.

15. For the purpose of pensionary benefits, guidelines have been laid down in "Guide to Medical Officers (Military Pensions), 2002" for reports by RMB, IMB or RSMB.

16. In the facts of the instant case the question No. 2 is answered accordingly.

Question No. 3 & 4.

17. With regard these questions, learned counsel for the respondents has placed reliance on letter/Notification dated 10.08.2009. I would like to reproduce the letter/Notification dated 10.08.2009 :-

"16307/Dis Cert/DGAFMS/DG-3A

10.Aug 2009

OFFICE OF THE DGAFMS/DG-3A
EXTENSION OF PROVISION OF PERSON WITH DISABILITIES EQUAL
OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL
PARTICIPATION) (PWD), ACT 1995 TO ARMED FORCES PERSONNEL
(INCL EX-SERVICEMEN) AND THEIR DEPENDENTS

1. *Persons with Disabilities Act (Equal Opportunities, Protection of rights and Full Participation) (PWD) Act 1995 provides for various benefits to persons with disabilities. The benefits and other concessions available to persons with disabilities could be availed only on production of "Disability Certificate" issued by the District Medical Board.*

2. *Armed Forces personnel were not able to utilize the provision of the PWD Act even though many servicemen retired due to disabilities caused to them during active service. These disabled ex-servicemen had to approach District Medical Boards for the issue of such certificates, this usually entailed long waiting besides other admin difficulties. Therefore, in order to facilitate the issue of disability certificates to Armed Forces personnel (incl ESM) and their dependents, Ministry of Social Justice and Empowerment had referred a point to this Dte Gen to get AFMS Hosp auth so as to issue*

such certificates for Armed Forces Personnel (incl dependants). This Dte Gen had agreed with the proposal and progressed the case with the Min of social Justice & Empowerment after getting the concurrence of MoD.

3. *Govt of India has since published the notification in part II Section IV of Gazette of India Extraordinary dated 18 Feb 2009 (copy att). A Med Bd duly constituted under the provisions of the notification will now be able to issue the certificates. These medical boards hereinafter will be called as Disability Medical Boards. These newly constituted Med Bd will be different from existing Release Medical Boards (RMB). The RMBs will however, continue to assess the individuals as per the "Guidelines for Medical Officers(Military Pension) 2002 (as amended)" for assessing disabilities for pension purposes.*

(underlined by me)

4. *The modalities of implementations of the PWD, Act 1995 in respect of Armed Forces personnel is as follows:-*

(a) Individual seeking certificate for any disability for self or dependent will approach the designated Disability Medical Boards with an application of request for issue of disability certificate. The applicant will also certify that no similar request have been made/certificate have been obtained through other military hospital/civil hospital (unless specifically asked to do so).

(b) The Disability Medical Board in designated AFMS hosp (as per notification) will examine the individual for the disability/ disabilities mentioned in para 1 of the notification.

(c) The disabilities will be assessed as per the percentage given in the PWD Act 1995 and Gazette notification (photocopy att).

(d) A copy of certificate will also be endorsed to the Record Office of the individual concerned so as to update personal records.

(e) Proper record will be maintained by the hospital in respect of all such certificates so issued, each applicant will be given a registration number against which the certificate will be accounted for.

5. *The disability certificate will have the same sancity as that of such certificates being issued by the present day District Medical Boards. It is therefore important that extreme care be exercised in examining and assessing disabilities because these certificates will have to stand the scrutiny of law. Therefore, uniformity and consistency in assessing the disabilities is essential.*

6. *Suitable instructions may please be issued to concerned Hospital for implementing the above guidelines. Wide publicity may also be given to the contents of this letter so that Armed Forces personnel both (serving & retired) and dependents benefit from the provisions of PWD Act 1995.*

7. *This has the approval of DGAFMS.*

*Sd/- x xxxxxx
(S.K. Kaushik)
Lt Col Jt Dir AFMS (H)"*

18. The aforesaid notification shows that in order to remove the difficulties being faced by ex-serviceman in getting disability certificate

for the purpose of civil employment or other benefits to issue disability certificate a different board was constituted. Alongwith this notification, list of hospital and other details have also been annexed. Apart from it, in the last portion of this notification, a provision has also been mentioned which reads as under :-

“The medical board constituted for issue of disability certificate will be different from medical board constituted for Release Medical Board or Invaliding Medical Board purpose.”

(underlined by me)

19. I have gone through “The Indian Medical Council Act, 1956” and “The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (herein referred to as “The Persons with Disabilities Act’), which came into existence after The Indian Medical Council Act, 1956. Therefore need to pass a different act for such different purpose was felt, accordingly it has been enacted for entitlement purpose which was not covered by ‘The Indian Medical Council Act, 1956’. Apart from it, object of ‘The Indian Medical Council Act, 1956’ show that it mainly deals with the medical education and maintenance of a medical register for India and for matters connected therewith. While object of ‘The Persons with Disabilities Act’ reads as under :-

“An Act to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region.

WHEREAS the Meeting to Launch the Asian and Pacific Decade of Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asia and Pacific held at Beijing on 1st to 5th December, 1992, adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region;

AND WHEREAS India is a signatory to the said Proclamation;

AND WHEREAS it is considered necessary to implement the Proclamation aforesaid.

Be it enacted by Parliament in the Forty-sixth Year of the Republic of India.”

20. This Act describes disabilities differently in Section 2 (b) (i) (d) (l) (n). Section 69 of this Act provides for ‘Punishment for fraudulently availing any benefit meant for persons with disabilities’. Section 72 of this Act provides ‘Act to be in addition to and not in derogation of any other law’. Section 73 confers ‘Power on the appropriate Government to make rules’. Section 2 (e) defines “person with disability”. It means a person suffering from not less than forty percent of any disability as certified by the medical authority.

21. The applicant has received the disability certificate from the disability Medical Board constituted under the aforementioned Act. It is established that the said disability certificate is received by applicant for a different purpose. Use of such certificate is not permissible for pensionary benefits. The notification issued by Govt. under the authority of the Act itself lays down that it shall be different from RMB which will continue to assess an individual for pensionary benefits and also provides that medical board constituted for issue of disability certificate will be different from medical board constituted for RMB/IMB. Thus, the applicant has received the certificate from a Medical Board constituted for an entirely different purpose and the certificate has been obtained by himself for the purpose of getting civil employment in disable category. Therefore, he cannot raise claim on the basis of such Disability Certificate to get disability pension.

22. By ‘The Persons with Disabilities Act’, the District Medical Boards were constituted for issuing ‘disability certificate’ to meet

objects of the Act. Since the ex-servicemen were facing difficulty in getting the disability certificate from District Medical Boards, therefore by the aforesaid Notification, Army has constituted its own Medical Board for granting disability certificates to remove the difficulties. Therefore in Para 5 of the above Notification, it has been specifically provided that such disability certificate shall have the same sanctity as certificates being issued by the present District Medical Boards. If the arguments of the learned counsel for the applicant is accepted then the disability certificate issued by the District Medical Boards have also to be considered for deciding the pensionary claims of the ex-servicemen because the disability certificate issued by the Army Medical Board has the same sanctity as is attached to certificate issued by District medical Board and by no stretch to imagination such a position is acceptable because pensionary benefits can be granted only on the basis of RMB/IMB/RSMB.

23. In view of the aforesaid notification it is clear that the purpose of the disability certificate issued under a different Act for different purpose was entirely different and it was only for the purpose of civil employment and other benefits to the ex-servicemen. Therefore, specific provision has been inserted in the Notification that this disability certificate will be different from the medical board constituted for the RMB/IMB/RSMB. The purpose of the RMB/IMB/RSMB is entirely different and in such Boards the applicant is medically examined keeping in view the strict fitness of a person to be retained in the Army service, therefore the purpose of the

RMB/IMB/RSMB is entirely different and different guidelines have been provided for the said purpose.

Question No. 3 and 4 answered accordingly.

24. In view of the conclusion on the aforesaid questions, I am of the view that since RMB has assessed his disability 20% for life and as NANA. Therefore, I am in agreement that the applicant's disability as per settled law on attributability by the Hon'ble Apex Court is to be considered as attributable to military service and his disability pension @ 20% for life shall stand rounded off to 50% for life.

25. The applicant shall be entitled to the arrears of the disability pension from a date three years prior to date of filing of O.A. The date of filing of O.A. is 10.09.2015.

26. Since the applicant has challenged the disability percentage as opined by his report of the RMB, I also consider it appropriate to refer the applicant to RSMB for his correct assessment of his present disability percentage.

27. Let this order be placed before the available Divisional Bench of AFT, Regional Bench, Lucknow for passing orders, in view of the majority decision, on **23.10.2018**.

(Justice S.V.S. Rathore)
Member (J)

Dated : October, 2018
SB