

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 459 of 2019

Monday, this the 30th day of September, 2019

“Hon’ble Mr. Justice Virender Singh, Chairperson
“Hon’ble Air Marshal BBP Sinha, Member (A)”

Ser No. 741946-H Sgt Santosh Kumar (Discharged), S/o Shri Vidya Nand Sharma, permanent resident of M-Adarsh Nagar Behind Aam Bagan, near Arjun Yadav House, PO: Gamharia, District Saraikela Kharsawan (Jharkhand)- 832108 and presently working as Single Window Operator (SWO), Punjab & Sind Bank, Branch: Charbagh, near Naka Gurudwara, Lucknow (UP)- 226004

..... Applicant

Counsel for the : **Shri Shailendra Kumar Singh, Advocate**
Applicant

Versus

1. Union of India, through Secretary, MoD (IAF), South Block, New Delhi 110066.
2. Chief of Air Staff, Air Hqrs, Vayu Bhawan, New Delhi- 110011.
3. Director III A (DP), DAV, Air Hqrs, Subroto Park, New Delhi- 110010
4. SAO (AF), O/O the Jt CDA (AF), Subroto Park, New Delhi - 110010
5. PCDA (P) (Air Force), Draupadi Ghat, Allahabad (UP)- 212114.

.....Respondents

Counsel for the : **Shri Rajiv Pandey, Advocate**
Respondents. Addl. Central Govt. Standing Counsel

ORDER**Per Hon'ble Air Marshal BBP Sinha, Member (A)**

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the grant of disability pension with the following prayers:

“(A) To quash or set aside the Respondent No.3 letter dated 08.03.2018 (Rejection of First Appeal).

(B) To direct the respondents to grant disability element to the applicant from the date of discontinuation of disability element i.e., 11May 2017 and to pay the arrears accrued thereof alongwith suitable rate of interest as deemed fit and proper by this Hon'ble Tribunal.

(C) To direct the respondents to grant rounding off benefits @ 20% to 50% for the period from 01.04.2016 to 10.05.2017 alongwith suitable rate of interest and also w.e.f. 11.05.2017 (date of discontinuance of disability element) till life in terms of Government of India letter dated 31.01.2001.

(D) Any other relief as considered proper by the Tribunal be awarded in favour of the applicant.”

2. As per office report there was a delay of 06 months and 24 days in filing the present O.A., which has been condoned vide order dated 12.09.2019.

3. Brief facts of the case are that the applicant was enrolled in Indian Air Force in Rad Fit Trade on 13.03.1996 and was discharged on 31.03.2016 in low medical category. At the time of discharge Release Medical Board (RMB) was held of the applicant. The RMB found him suffering from disability “**CSOM (Lt) ATTICO**

ANTERAL DISEASE (OPTD)” and assessed it @ 20% for two years. The RMB opined disability as attributable to military service. On being discharged from service applicant was granted service pension for life as well as disability element for the period of two years w.e.f. 01.04.2016. After about 07 months of discharge of the applicant, he was advised to report to Military Hospital, Namkhum Ranchi for Re-Assessment Medical Board (RAMB) vide letter dated 13.02.2017. Applicant accordingly was assessed by the RAMB on 17.05.2017, wherein disablement of the applicant was assessed at 15%- 19% for life. Pursuant to the aforesaid assessment, the applicant was informed that since his disability was found to be less than 20%, therefore disability element cannot be sanctioned to him. Feeling aggrieved the applicant preferred first and second appeals in the matter but all in vain, hence the present O.A.

4. The respondents have not filed any counter affidavit in this matter. However they have submitted certified copies of medical records. In the circumstances, it is clear from the record that the applicant was granted the disability element as aforesaid for two years but it was stopped later, on the ground that his disability is less than 20%. In the circumstance, no useful purpose would be served in keeping this O.A. pending since medical papers required for determination of controversy in dispute are already on record. Therefore, with the consent of learned counsel for the parties, we proceed to dispose of this O.A. finally without calling for filing of any counter affidavit from the respondents. The disability percentage has also been admitted by the learned counsel for the respondents during the course of argument.

5. Learned counsel for the applicant submitted that since the applicant was enrolled in a medically fit condition and his disability has been considered as attributable to military service, by RMB as well as by RAMB, therefore the action of respondents in stopping

the disability element should be set aside. He pleaded that applicant should be granted disability element.

6. Rebutting arguments of Ld. Counsel for the applicant, Ld. Counsel for the respondents submitted that the disability pension claim of the applicant was rightly rejected because though the RMB had conceded attributability and disability @ 20%, it was valid only for a period of two years while RAMB had assessed and reduced the disability percentage as 15%-19% for life, which is less than the minimum requirement of 20% for grant of disability pension. He concluded by stating that the respondents have rightly stopped disability element of applicant and pleaded for O.A. to be dismissed.

7. We have considered the rival submissions of the learned counsel for the parties and perused the material placed on record. In this case in both i.e. RMB and RAMB the disability has been held attributable to military service but the disability percentage in RAMB has reduced to 15-19% whereas it was 20% in RMB. Disability element has been denied to the applicant only on the ground that his disability percentage is less than 20%.

8. We have given our thoughtful consideration to all the aspects of this case. Following facts are absolutely clear to us :-

(a) That the applicant is a Radio Fitter by trade in IAF and his job is to wear Headphones on both ears and monitor the performance of ground to ground and ground to Air Radio Equipment.

(b) It is due to his trade duties and related infection that the medical board has considered his disability in the ear as "Attributable to service".

(c) "That the applicant is suffering from this disability since 10.03.2007 and since then has been in continuous low medical category till his discharge in April 2016.

(d) That his Release Medical Board held in May 2015 assessed his disability as attributable @ 20% for two years and he was accordingly granted disability element of pension.

(e) That his RAMB held in May 2017 again assessed his disability 'Attributable' but at a reduced percentage of 15-19%.

9. In the above scenario what intrigued us was that the applicant was suffering from a disability since 2007. This disability was considered as Attributable and assessed @ 20% by RMB in 2015 for two years. Due to this disability the applicant was in receipt of disability element. However in RAMB of 2017 the disability was assessed as 15-19% for life meaning thereby that a marginal improvement of about 1% has taken place in hearing. However, the marginal improvement resulted in applicant's disability being stopped because disability percentage has to be 20% & above for grant of disability element. In this situation, we tried to analyse as to how the RAMB has been able to identify this marginal improvement of 01% in hearing. A close scrutiny of the RSMB held in 2017 revealed that in Part I of RAMB, in Para 6 (a) there is a specific question i.e. "Has the condition improved or deteriorated since the last Board?" to this specific question the answer written by RAMB is as follows :-

"No, at present patient continues to have hearing loss (Lt). Audiometry shows moderate degree conductive hearing loss (Lt)."

Thereafter we have perused the original RMB at the time of discharge i.e. May 2015. In this RMB the above question i.e. Para 6(a) has been asked in reference to previous Annual Medical Board. However, to our surprise we found that the answer in RMB (May 2015) the answer to question 6(a) was ditto i.e. word to word same as given in RAMB of 2017 as mentioned above. Thus, we felt that if the observations of both RMB & RAMB are same on the

hearing loss as compared to previous Medical Board then how come with same set of facts, the RMB has opined the disability @ 20% and the RAMB has opined it @ 15-19% ?

10. Thus after considering all issues, we are of the considered opinion that probably this RAMB has gone hyper technical in its assessment of applicant's hearing loss and therefore in the interest of substantial justice, it will be in fitness of thing if RAMB opinion of 15-19% for life is deemed to be 20% for life in line with the previous medical board opinion i.e. opinion of RMB on percentage of disability.

11. In view of what has been stated above the O.A. deserves to be allowed and is hereby **partly allowed**. The impugned orders passed by the respondents are set aside. The applicant is held entitled to disability element @ 20% for life to be rounded off to 50 % for life from the date of discharge. However, in view of law of limitation vide ***Shiv Dass vs. Union of India***, reported in 2007 (3) SLR 445 the applicant shall be entitled to arrears of rounded off disability element only from preceding three years of filing the present O.A. The date of filing of this O.A. is 04.04.2019. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. 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.

12. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated : September ,2019
JPT/SB

(Justice Virender Singh)
Chairperson