

**RESERVED**  
**COURT NO 1**

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

**ORIGINAL APPLICATION No. 212 OF 2018**

Monday, this the 30<sup>th</sup> day of September, 2019

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

No. 14377286P Ex Nk (TS) Vishv Ranjan Prasad, son of late Ram Nath Yadav, resident of village-Chikari Math, Post-Chikari Math, District-Ballia-221701.

.....Applicant

Ld. Counsel for: **Shri V.P. Pandey**, Advocate  
the Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, Integrated Head Quarter, Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer Incharge Records, Army Air Defence Record, PIN-908803, C/O 99 APO.
4. Principal Controller of Defence Account (Pension), Dropdi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri R.K.S. Chauhan**,  
Respondents. Central Govt Counsel.

**ORDER****“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The present application has been filed under Section 14 of the Armed Forces Tribunal, Act, 2007 for grant of disability pension. The applicant has sought the following relief:-

*(i) To set aside/quash the impugned rejection order of disability pension dated 25.09.2001 as contained in Annexure No A-1 to the O.A.*

*(ii) Issue/pass an order or direction directing the respondents to grant disability pension from the date of his discharge.*

*(iii) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*

*(iv) Cost of the appeal be awarded to the applicant.*

2. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of 15 years and 01 month. Since payment of disability pension involves recurring cause of action, the delay was condoned vide order dated 16.04.2018.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 20.11.1983 and was discharged from service w.e.f. 30.11.2000 (AN) in terms of Army Rule 13 (3) III (i) in low medical category ‘CEE (P)’ having rendered 16 years, 11 months and 29 days of service. The Release Medical Board (RMB) of the applicant was held on 19.04.2000 at Military Hospital, Jalandhar. The RMB has assessed his disabilities (i) Osteoarthritis (RT) Knee @ 6-10% for two years aggravated by military service and (ii) Fracture Medial Condyle Tibia (Lt) @ 20% for two years attributable to military service. However, disability pension claim

of the applicant was rejected by PCDA (P), Allahabad vide order dated 25.09.2001 whereby the opinion of RMB has been overruled by reducing the disability to below 20% and also deeming it as neither attributable to nor aggravated by military service. First appeal preferred belatedly by the applicant was not taken into consideration as it was filed beyond the stipulated period. It is in this perspective that the applicant has preferred the present Original Application.

4. Learned Counsel for the applicant vehemently argued that the applicant was recruited in a fit state at the time of enrolment and had no disability/deformity at that time. He further submitted that it is the admitted case of the respondents (para 15 of the counter affidavit) that the disability suffered by the applicant was attributable to and aggravated by military service and since the disability was assessed by the RMB to be attributable to/aggravated by military service, as such, the claim of the applicant for grant of disability pension could not be rejected by the Principal Controller of Defence Accounts (Pensions) Allahabad. He further submitted that as per the policy on the point of rounding off of disability pension, the disability @ 20% as assessed by the RMB deserves to be rounded off to 50%.

5. Though respondents have not filed counter affidavit, they have submitted certified copies of Medical Board proceedings. Refuting arguments of Ld. Counsel for the applicant, Ld. Counsel for the respondents argued that though the RMB has considered

disability (i) Osteoarthritis (Rt) Knee @ 6-10% for two years as aggravated by military service and (ii) Fracture Medial Condyle Tibia (Lt) @ 20% for two years as attributable to military service, but the pension sanctioning authority i.e. Principal Controller of Defence Accounts (Pensions) Allahabad has reduced the disability factor as neither attributable to nor aggravated by military service and has rejected the claim of the applicant as such in view of Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I), the applicant is not entitled to the disability pension. He pleaded for dismissal of the O.A.

6. In this case though counter affidavit has not been submitted but respondents have provided certified copies of medical documents, with the consent of both the parties we proceed to decide this case.

7. It is a simple case where there are two disabilities and the RMB has opined first disability i.e. Osteoarthritis (Rt) Knee @ 6-10% for two years as aggravated by military service. The RMB has opined the second disability i.e. Fracture Medial Condyle Tibia (Lt) @ 20% for two years as attributable to military service (composite 20% for two years). However we find that PCDA (P), Allahabad has overruled the opinion of the RMB and denied disability pension to the applicant.

8. We have heard learned counsel for the applicant as also learned counsel for the respondents. We have also perused the record.

9. The law on supremacy of the opinion of a Medical Board is No more RES INTEGRA. 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.”*

10. Thus in light of above Judgment, we set aside the PCDA (P) order dated 25.09.2001 and agree with the opinion of RMB and consider applicant's disabilities (i) 'Osteoarthritis (Rt) Knee' and (ii) 'Fracture Medial Condyle Tibia (Lt)' compositely @ 20% for two years to be aggravated by and attributable to military service respectively.

11. In view of the above the applicant is held entitled to 20% disability element for two years which shall stand rounded off to 50% disability element for two years from the date of his discharge in terms of ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014.

12. As a result of foregoing discussion, the O.A. is **partly allowed**. The impugned order dated 25.09.2001 (Annexure No R-2 to the C.A.), is set aside and the benefit of rounding off to 50% is extended. As far as payment of arrears of disability element is concerned, Hon'ble the Apex Court in the case of **Shiv Dass vs Union of India & Ors** reported in 2007 (3) SLR 445 has held that arrears of disability pension are restricted to three years prior to filing of the O.A. if the same is filed belatedly and delay is condoned. Since the applicant has approached this Tribunal after a gap of more than 15 years and has filed this O.A. on 27.04.2017 therefore, he is not entitled to any arrears for the period of two years after discharge due to law of limitations as settled in the case of **Shiv Dass** (supra). The respondents are directed to hold applicant's Re-survey Medical Board (RSMB) afresh for re-assessing his present medical condition within a period of three months from the date of receipt of a certified copy of this order. Further entitlement of disability element of pension shall be subject to the outcome of the RSMB.

No order as to cost.

**(Air Marshal B.B.P. Sinha)**  
**Member (A)**

**(Justice Virender Singh)**  
**Chairperson**

Dated: September, 2019  
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