

RESERVED
COURT NO.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 17 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)

No. 4172292-X Ex Sep Ram Vishal Singh,
S/o Gandhi Singh,
R/o Radha Nagar, PAC Gate No.-4,
P.O. Fatehpur,
District Fatehpur, U.P.

.....Applicant

Ld. Counsel for :
the Applicant

Shri PK Shukla,
Advocate

Versus

1. Union of India through Secretary,
Ministry of Defence (Army),
South Block,
New Delhi-110010.
2. Chief of the Army Staff,
IHQ MOD (Army),
Army HQ, South Block,
New Delhi.
3. Officer in Charge Records,
The Kumaon Regiment,
PIN 900473 C/o 56 APO.
4. PCDA (Pension),
Draupadi Ghat,
Allahabad.

.....Respondents

Ld. Counsel for the :
Respondents

Shri Anurag Mishra,
Ld. Counsel for the Respondents.

ORDER

“Per Hon’ble Mr. Justice Virender Singh, Chairperson”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension. He has prayed for following reliefs :

“(A) To issue/pass an order or directions to set-aside/quash the letter dated 04.07.1996 passed by respondents.

“(B) To issue/pass an order or directions to the respondents to decide the First Appeal dated 27.11.2017 for grant of disability element of disability pension and “Rounding off” the disability pension @20% to 50% in light of Apex Court case i.e. Union of India versus Ram Avtar (supra).

“(C) To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

“(D) To Allow this original application with costs.”

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 more than 21 years. Since payment of pension involves recurring cause of action, as such, the delay was condoned and the petition was admitted.

3. In brief, the facts of the case are that the applicant was enrolled in the Army on 23.12.1978 and was discharged from service on 01.01.1996 under Army Rule 13(3) III on fulfilling the terms and conditions of enrolment after completion of 17 years and 09 days of service. At the time of enrolment, he was found fully fit in all respects. At the time of discharge, the Release Medical Board (RMB) held on 04.12.1995 opined his disability **“BILATERAL SENSORY NEURAL HEARING LOSS”**, @ 20% for two years to be aggravated by military service. After discharge, though the

applicant is in receipt of service pension, his claim for disability pension has been denied on the ground that the PCDA (P) Allahabad has overruled the opinion of RMB and rejected his claim of disability pension vide order dated 04.07.1996 on the ground that said disease is NANA. The applicant preferred the First Appeal before the First Appellate Authority after a delay of about 20 years which has been rejected as time barred. Hence this O.A.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition and has been discharged from service in Low Medical Category and his disability has been accepted by RMB as Aggravated by military service and he should be granted disability pension. He further submitted that the law on the supremacy of the opinion of a medical board has already been established by the Hon'ble Supreme Court, hence action of PCDA (P), Allahabad to overrule the opinion of RMB is wrong and should be set aside and the applicant should be granted disability pension in accordance with the recommendations of RMB.

5. The respondents have not disputed that RMB conceded the disease of **“BILATERAL SENSORY NEURAL HEARING LOSS”** as aggravated by military service and his percentage was assessed at 20% for two years. The learned counsel for the respondents submitted that after discharge, service pension has been granted to the applicant. However, PCDA (P), Allahabad as competent authority has overruled opinion of RMB and rejected the claim of disability element of disability pension vide order dated 04.07.1996 on the ground that said disease is NANA. Hence the applicant is not eligible for disability pension.

6. We have heard the parties and perused the RMB in detail. The question before us is straight and simple i.e. is the action of PCDA (P) Allahabad in overruling the opinion of RMB correct and justified?

7. In this connection we have carried out a detailed scrutiny of the RMB and noted that the disease first started in October 1982 when the applicant was posted in a field area in LEH & LADDAK region. The RMB has opined his disease to be Aggravated by military service on the ground of “PROLONGED HEARING STRESS DUE TO EXPOSURE TO FIELD FIRING”.

8. In the above scenario, we find that the law on supremacy of the opinion of a medical board is no more *RES INTEGRA* and the same has been settled by the Hon’ble Apex Court in the case of **Ex. Sapper Mohinder Singh vs. Union of India** in Civil Appeal No 104 of 1993 decided on 14.01.1993. Relevant extract of the judgment is as follows :-

“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.”

Thus in view of the aforesaid, we set aside the decision of PCDA (P) Allahabad in overruling the opinion of the Release Medical Board (RMB). We are in agreement with the opinion of RMB that the applicant's disease is Aggravated by military service @ 20% for two years. Hence the disability of the applicant is to be considered as 'Aggravated' by military service.

9. In view of the above, the **Original Application No.17 of 2019** deserves to be allowed, hence, **allowed**. The impugned order dated 04.07.1996 passed by the respondents is set aside. The disability of the applicant **"BILATERAL SENSORY NEURAL HEARING LOSS"** @20% for two years is to be considered as Aggravated by military service with effect from the date of his discharge i.e. 01.01.1996. However, in view of law of limitation, the applicant is not entitled to any arrears on his disability element for the period of two years after his discharge for which RMB is valid. The respondents are directed to conduct a Re-Survey Medical Board for the applicant and his entitlement to disability element will depend upon the outcome of the Re-Survey Medical Board. Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice Virender Singh)
Chairperson

Dated: September, 2019
PKG/SB