

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 104 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)”

Ex. Sigm No. 14212309H, Fasiullah Khan, Son of Sri Ahsan Ullah Khan, Resident of Town & Post Shahi, Tehsil Meergnj, District Bareilly.

..... Applicant

Counsel for the : **Shri S.S. Rajawat, Advocate**
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, DHQ PO New Delhi 110011.
2. The Chief of the Army Staff, Integrated HQ of Ministry of Defence (Army), DHQ PO, New Delhi- 110011.
3. OIC, The Records, Signals, C/o 56 APO, PIN 908770.
4. Commanding Officer, 481, Signal Company, C/o 56 APO.
5. Principal Controller of Defence Account, PCDA (Pension), Draupadi Ghat, Allahabad (U.P.)

.....Respondents

Counsel for the : **Shri Namit Sharma, 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 rounding off benefits with the following prayers:

- “(a) to set aside the impugned order passed by the PCDA (Pension) Allahabad, rejecting the claim of the applicant for disability pension, after summoning the records from the respondents;*
- (b) to direct the respondents for declaring the disability viz. “Bell’s Palsy (RT) 350” assessing the degree of disablement at 10% for 2 years, as aggravated during military service of the applicant and grant disability ailment of disability pension from the date of his discharge i.e. 03.12.1978 from the service with rounding off facility to 50% with interest of 18% per annum with arrears;*
- (c) to pass such other orders/directions as deemed fit as required in the facts and circumstances of the present case.”*

2. The delay in filing the present O.A. has already been condoned vide order dated 12.02.2019.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army as Sepoy on 23.11.1970 and was discharged on 03.12.1978 after rendering 08 years and 11 days of military service, in low medical category for disability “**BELL’S PALSY (RT) 350**” under Rule 13 (3) Item III (v) read in conjunction with sub rule 2(a) of the Army Rules, 1954. The Release Medical Board (RMB) of the applicant opined his disability “**BELL’S PALSY (RT) 350**” to be “aggravated and connected with service” and assessed it @ 10% for two years. When the applicant did not receive any disability pension, he sent a legal notice to the Signal Record Officer on 31.05.2016, in reply whereof OIC Record vide letter dated 18.06.2016 informed the applicant that the RMB opined his disability as aggravated by Military service, assessing it

at 10% for two years but his claim for disability pension was rejected by PCDA (Pension) Allahabad as a NANA case. According to the applicant he never received any information from the respondents to this effect. However, as per letter dated 18.06.2016 aforesaid, he preferred an appeal on 10.08.2016 but the same was returned to him without passing any order. Thereafter the applicant sent an application dated 20.09.2016 to the OIC Records to provide him medical documents, which was provided to him on 28.09.2016. Thereafter, the applicant filed representations time and again but he was informed that he is not eligible for disability pension. Hence the present O.A.

4. The respondents have filed counter affidavit denying the claim of the applicant on two grounds, first that the disability of the applicant is neither attributable to nor aggravated by the military service and secondly that the disability percentage with which the applicant was found suffering was less than 20% and as such as per pension regulations he is not at all entitled to any disability pension.

5. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition and his disability has been considered as aggravated due to military service, by RMB, therefore the action of PCDA (P) Allahabad in overruling the recommendations of RMB as NANA without a second medical examination of the applicant, should be set aside in light of clear rulings on this matter by Hon'ble Apex Court. He pleaded that applicant should be granted disability pension.

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 aggravation but it had assessed the degree of disablement 10% for two years, which is less than the minimum requirement of 20% for grant of disability pension and the PCDA

(P) has found the disability as NANA, therefore the disability pension is inadmissible to the applicant.

7. We have heard Shri S.S. Rajawat, Ld. Counsel for the applicant and Shri Namit Sharma, Ld. Counsel for the respondents and perused the record.

8. We have considered the rival submissions of the learned counsel for the parties and perused the material placed on record. We find that we need to answer two issues i.e. firstly was the discharge of applicant through RMB the right decision or should it have been a case of invalidating out through Invalid Medical Board? Secondly whether the PCDA (P) was right in overruling the decision of IMB who had opined the disability of the applicant to be aggravated by Military service?

9. Coming to the issue of whether the applicant should have been discharged through RMB or invalidated out through IMB, we find that since the applicant's services were cut short and he was removed prematurely on medical grounds by RMB, his discharge will be deemed to be a case of invalidation out in terms of Regulation 173-A of Pension Regulations for the Army, 1961 which reads as under:-

“173-A. Individuals who are placed in a lower medical category (other than ‘E’) permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative appointment are discharged before completion of their engagement, shall be deemed to have been invalided from service for the purpose of the entitlement rules laid down in Appendix II to these Regulations.

Note. *The above provision shall also apply to individuals who are placed in a low medical category while on extended service and are discharged on that account before the completion of the period of their extension”.*

10. Thus in the above circumstances, the discharge of the applicant will be deemed to be a case of INVALIDATION OUT. So far as the second question regarding overruling the decision of RMB by PCDA (P) is concerned, in this matter the supremacy of a Medical Board which has physically examined the individual has been clearly established vide Hon'ble Apex Court judgment in Civil Appeal No. 164/ 1991 **Union of India in Ex. Sapper Mohinder Singh vs. Union of India**. The observation made in the decision of **Ex.Sapper Mohinder Singh** (supra) being relevant is quoted below:

“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 light of the law settled by Hon'ble Apex Court we agree with findings of RMB and set aside the orders passed by the respondents including PCDA (P) Allahabad on this matter and declare the disability of the applicant as aggravated by military service. Additionally the disability of an applicant can't be less than 20% if he has been invalided out of service as per law settled by Hon'ble Apex Court in the case of **Sukhvinder Singh vs. Union of India**, (2014) 14 SCC 364. Hence, the applicant will be deemed to be invalided out with a disability @20% for two years.

11. As for as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding for period in question i.e. two years from 03.12.1978.

12. It is well settled that the claim for pension is based on continuing wrong and the relief can be granted if such continuing wrong creates a continuing source of injury. In the case of ***Shiv Dass vs. Union of India***, reported in 2007 (3) SLR 445 the law settled by the Hon'ble Apex Court is that if a petition for pension (disability pension in this case) is filed beyond a reasonable period, the relief prayed for may be restricted to a reasonable period of three years.

13. In addition the medical board has assessed the disability of the applicant as 10% for two years, as such, keeping in view the judgment of ***Veer Pal Singh vs. Ministry of Defence & ors***, reported in (2013) 8 SCC 83, we feel that the case of the applicant should be recommended for Re-survey Medical Board to reassess future entitlement to disability element, if any.

14. In view of above the Original Application No. 104 of 2019 is **partly allowed**. The impugned orders passed by the respondents are set aside. The applicant is deemed to have been invalided out of service. His disability is to be considered as aggravated @20% for two years after discharge, hence, applicant is entitled to disability pension after invalidation. However, due to law of limitations he is entitled for arrears of service element for only three years preceding the date of filing the Original Application. The date of filing Original Application is 09.10.2018. Additionally the applicant is not entitled to receive arrears of disability element for two years from the date of discharge due to law of limitations. The respondents are required to refer the applicant's case to Re-survey Medical Board for deciding the future entitlement of his disability element. The respondents are also 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.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated : September ,2019
JPT/AKD

(Justice Virender Singh)
Chairperson