

**Reserved**  
**Court No.1**

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

**ORIGINAL APPLICATION No. 339 of 2021**

Wednesday this the 30<sup>th</sup> day of March, 2022

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 15398393-A, Sigmn Dinesh Kumar Singh S/o Dal Bahadur Singh, Resident of Vill& Po-Atvan, Tehsil-Salon, District Raebareilly, U.P.

..... **Applicant**

Learned counsel for the Applicant : **Shri Parijaat Belaura, Advocate.**

Versus

1. Union of India, through Secretary, ministry of Defence, New Delhi.
2. Directorate of Signals, General Staff Branch, HQ of MoD Army, DHQ, Po-New Delhi.
3. Officer –in –Charge, Signal Records, Signal Abhilekh Karyalaya, Jabalpur, MP, Pin-482001.
4. The Principal Controller of Defence Account (Pension) Draupadi Ghat, Allahabad (U.P).
5. The Branch Manager, State Bank of India, Branch – Salon District-Raebareilly.
6. The Manager Central Pension Processing Cell SBI Kachehri Road, Allahabad.

.....**Respondents**

Learned counsel for the Respondents. : **Shri Arun kumar Sahu, Central Govt. Counsel**

**Alongwith**

**ORIGINAL APPLICATION NO 454 OF 2019**

Wednesday this the 30<sup>th</sup> day of March, 2022

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

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.....**Respondents**

Learned counsel for the Respondents. : **Dr. Shailendra Sharma Atal, Ld Counsel for Respondent No 1 to 4 and Shri DC Lohumi, Ld Counsel For respondents No 5 and 6.**

## ORDER

### “Per Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (I) *To set aside Opinion of medical Board dated 29.07.2019 (after calling for records).*
- (II) *To consider applicant’s disability @20%.*
- (III) *To pay Disability Pension 50% after giving benefit of rounding of wef the date on which it was stopped.*
- (IV) *To pay arrears of Disability Pension 10% wef the date on which it was stopped.*
- (V) *Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- (VI) *Cost of the appeal be awarded to the applicant.*

2. Brief facts of the case giving rise to these applications are that the applicant was enrolled in the Indian Army on 28.04.1996 and invalided out from service on 31.05.2004. His disability (i) MAL ABSORPTION SYNDROM ENTROPATHY assessed @ 15-19% and (ii) PULMONARY TB assessed @ 20% for life and were considered as aggravated by military service and applicant was granted disability pension @ 20% for life which was rounded of to 50%. Applicant filed petition which was allowed

and applicant was notionally reinstated in service and he was granted service pension. His re-assessment medical board was held on 29.07.2019 and his disability was found Nil for life. Respondents started recovery of Rs. 5,600/- per month from the pension of the applicant. Applicant filed application with the prayer to stop recovery of disability pension and to grant disability pension to him. Recovery of disability pension of the applicant has been stayed till finalisation of O.A. vide this Tribunal order dated 13.09.2019. Applicant has filed instant O.A. with the prayer to cancel re-assessment medical board dated 29.07.2019 and stop recovery of disability pension from his pension and grant him disability pension for life in terms of release medical board dated 16.03.2004.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Army on 28.04.1996 and was discharged from service on 31.05.2004 in low medical category P2 by conducting Invalid Medical Board as such he completed 08 years of service only. The applicant was found to have been suffering from disability (i) MAL ABSORPTION SYNDROM ENTROPATHI assessed @ 15-19% and disability (ii) PULMONARY TB assessed @ 20%. First disability was assessed as NANA whereas 2<sup>nd</sup> disability was assessed as

attributable to military service and the disabilities were assessed for life. Applicant was granted disability pension @ 20% which was rounded of to 50%. In the year 2011, applicant filed Original Application No 261 of 2013 before this Tribunal with prayer to reinstate him in service in terms of Hon'ble Apex Court judgment in the case of Union of India & Others Vs Rajpal Singh. The O.A. was disposed of vide order dated 18.08.2015 setting aside discharge order with directions to notionally reinstate the applicant in service till completion of 15 years of service and applicant was granted service pension with other post retiral benefits. He was not granted any back wages for the said period.

4. Learned counsel for the applicant submitted that at the time of discharge, disability of the applicant was assessed @ 20% for life and no re-survey medical board was required to be conducted till applicant himself asks for as per para 65 (III) of Pension Regulation for the Army Part II (2008). Once permanent disability has been assessed for life then it can be re-assessed only when individual himself requests for review. Applicant filed Ex A No 67 of 2016 for compliance of order dated 18.08.2015 passed in O.A. No 261 of 2013 and PPO dated 18.10.2016 was issued granting pension of Sepoy wef 01.05.2011 without

disability pension. Applicant without his request was directed to attend resurvey medical board to reassess his condition which assessed the disability of the applicant as Nil. Accordingly, Manager State Bank of India Salon, Raebareilly (U.P.) without information of applicant started recovering Rs. 5,600/- per month from the pension of the applicant. Applicant filed O.A. No 454 of 2019 then recovery was stayed by this Tribunal vide order dated 13.09.2019. In the opinion of Graded Specialist there was no evidence of active Tuberculous infection and the disease process was 'STATIC'. Even in spite of that, Medical Board in which Graded Specialist himself was not member has misread and individual has been shown 'IMPROVED" in Column 6 of AFMSF-17. Disability of the applicant has been assessed not even 0 – 5% instead it has been assessed as NIL. Hon'ble Apex Court in the case of Sukhvinder Singh vs Union of India has held that disease on the basis of which individual has been invalidated out, disability has to be considered @ 20% even if it is less than 20%. Learned counsel submitted that keeping in view decision of the Hon'ble Apex Court dated 16.12.2008 in Civil Appeal No 3351-3354 of 2003, **Syed Abdul Qadir & Ors vs State of Bihar & Ors**, order dated 18.12.2014 in Civil Appeal No 11527 of 2014, **State of Punjab & Ors vs Rafiq Masih (White Washer)**, Hon'ble Calcutta High Court order dated 18.01.2017 passed in

WP 29979 (W) of 2016, **Shiba Rani Maity vs The State of West Bengal**, Hon'ble High Court of Mumbai order dated 20.08.2020 passed in LD-VC-CW-665 of 2020, **Shri Naini Gopal vs The Union of India & Ors**, directions be issued to the respondents to refund the amount recovered from pension and also stop recovery of the balance amount. Learned counsel for the applicant pleaded that Medical Board proceeding dated 29.07.2019 assessing the disability as Nil be set aside and disability of the applicant be considered as 20% for life and applicant be granted disability pension @ 50% for life and recovery made from pension of the applicant be refunded.

5. On the other hand, learned counsel for the respondents argued that applicant was diagnosed with 'MALABSORPTION SYNDROME' with effect from March 1999 and 'PULMOMARY TUBERCULOSIS' from 25.12.2000 while serving with 4 Corps Op Sig Regt, Tejpur and he was placed in low medical category P2. He rendered his willingness to continue in service. However he was not recommended for retention in service. Applicant was approved for discharge from service from 31.05.2004. Release Medical Board of the applicant was held on 16.03.2004 and his disability 'MALABSORPTION SYNDROME' was opined as aggravated due to dietary compulsion in field area during May

1998 to Mar 1999 and the disability 'PULMONARY TUBERCULOSIS' was opined as attributable to service due to disability resulted from infection while in active service. The medical board assessed degree of disablement @ 15-19% for disease 'MALABSORPTION SYNDROME' and @ 20% for the disease 'PULMONARY TUBERCULOSIS' with composite assessment 20% for life. Subsequently applicant was discharged from service on 31.05.2004 and he was granted disability pension vide PPO dated 26.06.2007. Applicant filed O.A. No 261 of 2013 for reinstate him in service and he was notionally reinstated in service till completion of 15 years of service. He was granted service pension and post retirement benefits however, he was not granted back wages for the said period. Applicant was granted service pension for life with restriction that **'PPO No D/010807/2004, D/020074/2007 and all subsequent Corr PPOs issued earlier are hereby cancelled and amount already paid vide those PPOs shall be recovered/adjusted from arrears paid. If any unrecovered amount is left, then the same may be recovered @ 1/3 of pension'**. Accordingly, Pay Disbursing Agency started recovery of sum of Rs 5,600/- per month from the applicant's pension.



6. Learned counsel for the respondents pleaded that case of the applicant for grant of disability pension was processed to PCDA (P) Allahabad and the same was returned vide letter dated 31.08.2018 directing that as per AFT order dated 18 May 2015, the release medical board on the basis of which the applicant was released from service on 31.05.2004 is illegal and not in accordance with prescribed procedure, therefore, the said medical board proceeding will be treated as null and void and on that basis the disability element cannot be notified. PCDA (P), Allahabad also recommended to arrange for a Review Medical Board and thereafter, claim be submitted. Subsequently, Reassessment Medical Board of the applicant was carried out at Command Hospital Lucknow on 29 July 2019 and his disabilities were found as Nil for life, hence disability pension of the applicant was stopped.

7. Applicant filed O.A. No 454 of 2019 for stopping recovery and transmit back the amount which was recovered illegally with interest and to pay full pension admissible to a Sepoy on completion of 15 years of service. The Tribunal vide order dated 13 Sep 2019 directed the respondents that **‘till the finalisation of case, the amount of Rs. 5,600/- shall not be recovered from the applicant’**. Accordingly, recovery was stopped from

January 2020. O.A. No 454 of 2019 is still subjudice with AFT Lucknow. The applicant has filed instant O.A. to set aside opinion of Medical Board dated 29.07.2019 and grant disability pension to the applicant @ 20% rounded of to 50% for life and reimburse the amount of disability pension already deducted from the pension of the applicant.

8. Learned counsel for the respondents pleaded that since previous Released Medical Board dated 16.03.2004 has been quashed and as per medical board dated 29.07.2019, both the disabilities of the applicant have been assessed as Nil, as per Rule 173 of Pension Regulations for the Army 1961 (Part-1) superseded by Para 53 (a), Part 1 of Pension Regulation 2008, applicant is not entitled for grant of disability pension. Hon'ble Apex Court in the case in Civil Appeal No 164 of 1991, UOI Vs Ex Sapper Mohinder Singh have held that opinion expressed by Medical Board being an expert body who physically examined the individual to be given due weightage, value and credence. Therefore, the RMB dated 29 July 2019 is legal and valid and applicant is not entitled for grant of disability pension. . Relying upon the Hon'ble Apex Court decision dated 29.07.2016 rendered in CA No 3500/2006 titled **High Court of Punjab & Haryana & Ors vs Jagdev Singh** and Hon'ble High Court of

Punjab and Haryana at Chandigarh order dated 20.05.2019 passed in CWP No 3159/2016 titled **Smt Sunita Mahajan vs UOI & Ors**, learned counsel for the respondents submitted that recovery made and amount ordered to be recovered from the applicant is as per guidelines of RBI. In support of their submission citing the Hon'ble Apex Court judgment dated 29.07.2016 rendered in the case of **High Court of Punjab & Haryana and Ors vs Jagdev Singh**, Civil Appeal No 3500 of 2006, respondents have contended that the amount paid in excess is recoverable. We have perused the aforesaid judgment and we find that recovery made/being made from the applicant is justified in view of para 11 and 12 of the aforesaid judgment which for convenience is reproduced as under:-

*“11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.*

*12. For these reasons, the judgment of the High Court of which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.”*

9. Thus, Learned counsel for the respondents pleaded that both Original Applications filed by the applicant have no substance and are liable to be dismissed.

10. We have heard learned counsel for the parties and perused the material placed on record. We have also gone through Invalid Medical Board dated 16.03.2004 and Re-assessment Medical Board dated 29.07.2019 and the rejection order of disability pension claim. The questions before us to decide are of two fold:-

- (a) When medical board proceeding granting disability pension has been quashed resulting in the applicant being reinstated in service and thereafter, as per re-assessment medical board when disability has been assessed as Nil, in that case whether the applicant is entitled for disability pension or not?
- (b) Whether respondents can recover disability pension already granted to applicant?

11. In the instant case, applicant was placed in low medical category P2 (Permanent) and he was invalided out of service vide Release Medical Board dated 16.03.2004. His disability was assessed @ 20% for life and considered as attributable to military service. Applicant was granted disability pension @ 20%

which was rounded off to 50% for life. He filed petition for quashing Release Medical Board dated 16.03.2004 and to reinstate him in service which was allowed and Release Medical Board dated 16.03.2004 was quashed and applicant was notionally reinstated in service and he was granted service pension with post retiral benefits. A fresh Reassessment Medical Board dated 29.07.2019 of the applicant was held to reassess his condition for grant of disability pension which found the condition of the applicant 'improved' and his disability was found 'Nil'. Hon'ble Apex Court in the case in Civil Appeal No 164 of 1991, UOI Vs Ex Sapper Mohinder Singh have held that opinion expressed by Medical Board being an expert body who physically examined the individual be given due weightage, value and credence, hence reassessment medical board dated 29.07.2019 cannot be quashed.

12. Since Release Medical Board dated 16.03.2004 was quashed vide order of this Tribunal dated 18.08.2015 and the applicant was notionally reinstated in service and he was granted service pension, he is not entitled for disability pension for the period he was notionally in service. Though he was not granted pay and allowances for the period he was notionally in service, but he cannot claim disability pension for the period he

was notionally in service as disability pension is granted on retirement. As far as recovery of disability pension is concerned, respondents have every right to recover disability pension granted to applicant for the period he was notionally in service. We also find that rulings relied upon by the applicant being either based on different facts or overruled are of no help to him.

13. In the result, we hold that the applicant is not entitled for disability pension in terms of reassessment medical board dated 29.07.2019. Respondents are rightly deducting Rs. 5,600/- per month from the pension of the applicant which cannot be stopped. Respondents are directed to recover disability pension already granted to applicant at the rate of Rs. 5,600/- per month till amount paid to the applicant is recovered.

14. Accordingly, O.A. No 339 of 2021 and O.A. 454 of 2019 are dismissed.

15. No order as to cost.

16. Pending applications, if any, are disposed of accordingly.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: 30 March, 2022

UKT/-