

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

O.A.No. 30 of 2010

Ex. Hav Ramphal

...Petitioner

Versus

Union of India & Others

...Respondent

For the Petitioner : Shri S.M.Hooda, Advocate

For the Respondents: Shri Anil Gautam, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. M.L.NAIDU, MEMBER (A)

ORDERS

1. The applicant by this application has prayed to set aside the order dated 22.4.2009 and for payment of disability pension from 1.3.2002.
2. The applicant was enrolled in the Army in 1975 and was discharged from service on 1.9.1997. At the time of discharge

he was in low medical category 'BEE' permanent on account of Lumber Spondylitis and Cervical Spondylitis and his disability was assessed as 20% for two years. His papers for disability pension was moved to PCDA(P) Allahabad. The PCDA assessed his disability less than 20% aggravated by the military service. His papers were moved before the PCDA, Allahabad and PCDA assessed his disability from 15 to 19% for five years from 1.9.1997 to 22.4.2002. Consequently, he was brought before Resurvey Medical Board after five years at Military Hospital, Ambala on 1.3.2000, which reassessed his disability @ 15 to 19% for life and the same was upheld by PCDA, Allahabad and his disability was discontinued for life.

3. Petitioner filed a writ petition in High Court praying for disability pension from 1.9.1997. This writ petition was disposed of by Hon'ble High Court by the order dated 8.3.2004 relying on the decision given in the case of ***W.P. © 5166 of 2000 Ex. Ct Jasbir Singh dated 6.3.2003*** and disability pension was granted to the petitioner @ 20% w.e.f.

1.9.1997 to 28.2.2002. The petitioner again filed a Writ Petition (c) No.5755 of 2008 in the High Court for broad banding of the disability pension from 20% to 50%. The High Court on 8.8.2008 directed to re-examine the case of petitioner for grant of enhancement rate of disability pension. This case was re-examined by the respondent and respondent held that benefit of para 7.2 of the Govt. of India Ministry of Defence letter dated 31.1.2001 is not applicable to the petitioner as he has not been invalidated out from service. i.e. his tenure of service was not curtailed w.e.f. 1.1.1996 and thereafter. A distinction was sought to be made between the released Medical Board and invalidated board. Since the petitioner proceeded on superannuation after completion of normal term of engagement therefore, para 7.2 was not applicable and as such this benefit was declined to the petitioner and the request of the petitioner of broad banding was rejected. Thereafter, petitioner has filed this petition on 22.4.2009 before this tribunal and prayed that order dated 22.4.2009 may be quashed and the petitioner may be

restored with disability element of pension w.e.f. 1.3.2002 on the ground that once the petitioner had been found to be suffering from the lumber spondylitis and cervical spondylitis as a permanent disability. Therefore, he need not to have again called before the resurvey medical board and PCDA, Allahabad could not have arbitrarily reduced the disability of the petitioner without examining the petitioner. It is submitted that reduction of disability by the PCDA, Allahabad without examining the petitioner was bad and similarly same was upheld by the resurvey medical board. It is also pointed out that on the recommendation of the 5th Pay Commission dated 7.2.2001 para -7 clearly says that there will be no periodical reviews by the medical board for reassessment of disabilities in case of being permanent nature. The decision once arrived at will be final for life unless individual himself requests for the review. It is also pointed out that in cases of disability which are not of permanent nature, there will be one review of percentage of disability by medical board to be carried out later within the specified time frame and such

recommendation will be final for life unless individual himself ask for a review. Therefore, it is submitted that incumbent once has been found to be have suffered permanent disability should not have been assigned for resurvey medical board. The PCDA Allahabad has also wrongly reduced the disability without physically examining the petitioner they arbitrarily reduced it to 15 to 19%. This decision of the PCDA, Allahabad was wrong and the same was reiterated by the resurvey medical Board.

4. Learned Counsel for the respondent submitted that it is true that the petitioner's disability held to be 20% for two years being permanent. But the order passed by the PCDA, Allahabad reduced the disability and the same was reaffirmed by the resurvey medical board. Therefore, petitioner is not entitled to the benefit of Circular dated 7.2.2001.
5. We considered the rival submissions of the parties. It is true that the at the time when PCDA, Allahabad reduced the disability of the petitioner and the same being reaffirmed, this circular has not come into force, but the order of the PCDA,

Allahabad decision that disability has been reduced to 15 to 19% is already been set aside by the Delhi High Court and the petitioner was granted the disability pension @ 20% from 1.9.1997 to 28.2.2002. But now meanwhile, the new circular has intervened dated 27.8.2002, whereby it has been clearly laid down that once this disability has been permanent then it will be for a life and incumbent need not be brought again. Had that order of the PCDA, Allahabad not been set aside by the Delhi High Court and petitioner had not been granted a disability pension for a period of 5 years upto 2002, perhaps the arguments would have been attracted. But since, the petitioner was granted disability pension from 1.9.1997 to 28.2.2002 for a period of five years. Therefore, on the expiry of the period of five years, the circular of 27.8.2002 would have come into play. Therefore, now only question is whether to continue pension or not. This circular says that once the disability is permanent then incumbent is not required to be called before the resurvey medical board.

6. Hence the petitioner shall be entitled to benefit of this Circular and disability which has been already held to be 20% aggravated by the military service, the petitioner be entitled to get the disability pension @ 20%. The petitioner has been already granted disability pension upto 28.2.2002 and the same was discontinued from the 1.3.2002. Therefore, petitioner be entitled to 20% disability pension from 1.3.2002, but he has filed this petition on 14.1.2010. Therefore, petitioner is not entitled to benefit to arrears from 1.3.2002, but he will be entitled to the arrears from the last three years preceding the date of filing of the petition i.e. 19.1.2010. However, he has requested for broad banding of pension but same was rightly rejected by the respondent as the petitioner has not been invalidated out of service but he was released on superannuation after completion of normal tenure of engagement. Therefore, he will not be entitled to broad banding.

However, this petition is allowed in part and petitioner shall be entitled to the benefit of 20% disability from 1.3.2002 but since he has filed petition on 19.3.2010, as such he shall be entitled to arrears for the last three years preceding to the date of filing of the petition and he shall also be entitled to the interest @ 12% p.a. The arrears be worked out and be paid to the petitioner within three months.

7. The petition is disposed of with above observations. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
) / November, 2010