

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI  
12.  
O.A. No. 491/2012

Ex L/NK Rakesh Kumar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. Abhik Kumar, Advocate.  
For respondents: Ms. Jagrati Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.  
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER  
23.08.2012

1. The petitioner vide this petition has prayed that respondents be directed to grant him disability pension from 01.08.1995 to 25.08.2009.
2. The petitioner was enrolled in the Indian Army as a regular combatant on 04.05.1979. In August 1984, he was posted in Kupuwara Sector and assigned night duty on Balbir Post. During patrolling, the petitioner had fell down after slipping from the ice and became unconscious and one of the guard found the petitioner lying unconsciously and took him in the bunker. He was admitted in 92, Base Hospital for his medical treatment. Since he was not responded to the treatment, the petitioner was referred to Command Hospital, Udhampur and thereafter he was discharged from the Command Hospital with down category 'CEE' (Temporary) for six months and was sent to Jabalpur Centre with remarks 'Not fit for Hills and Cold Area'. After a period of two months the petitioner was called back to his unit and again after six months, the petitioner had undergone a check up and was categorised 'CEE' (Temporary). The petitioner attended the third Medical Board and was

categorised 'CEE' (Permanent) and thereafter he was sent to Sri Lanka as a troop during peace keeping force operation.

3. In the year 1984, the petitioner developed SATICA DROME. On 30.07.1995, the petitioner was recommended by the Medical Board under Rule 13 (2A) of the Army Rules, 1954 read with Para III(iii) of the Table thereto, for being invalided out of service on account of disability which was attributable to or aggravated by military services and his disablement was assessed at 20%. He was discharged from service after having completed 16 years 2 months and 26 days whereby the total engagement period was for 17 years. Since the petitioner could not be accommodated on sheltered appointment, he was discharged. In the year 2000, a Medical Board was conducted wherein the Board assessed the petitioner's disability at 20%. But he was not granted any disability pension.

4. Thereafter, it is alleged that the petitioner filed a writ petition before the Delhi High Court and the Delhi High Court vide its order dated 29.05.2009 directed the authorities to consider the appeal of the petitioner pending before them. After the orders of High Court, the respondents again sent the petitioner for Release Medical Board and the Board on 26.08.2009 again reiterated that the disability of the petitioner is 20% and thereafter the petitioner was granted disability pension.

5. But the grievance of the petitioner is that first Medical Board which was convened on 11.03.1995 has already found the petitioner's disability to the extent of 20% aggravated/attributable to military service and he was not granted disability pension. He has been granted disability pension @20% from 26.08.2009 onwards only. He is getting the disability pension of Rs.702/- but he has not be granted any disability pension from 1995.

6. A detailed reply has been filed by the respondents and respondents have pointed out that it is true that petitioner was discharged from service on 31.07.1995 under Rule 13(3) III(V) read in conjunction with Army Rule 13 (2A) as his service was no longer required being placed in permanent medical category and no suitable alternative appointment was available as he was found suffering from "SCIATICA SYNDROME". The petitioner was appeared before the Release Medical Board prior to proceeding on discharge and the disability of the petitioner was considered as aggravated by military service and was assessed @20% by the medical authorities. The disability pension claim of the petitioner was forwarded to the PCDA (P), Allahabad but the same was rejected by them vide their letter dated 04.04.1996 stating that his disability was assessed @15% to 19% for five years. A Re-survey Medical Board of the petitioner was again held on 29.04.2000 and his disability was assessed @20% for five years. Again papers were sent to PCDA (P), Allahabad. They again rejected his claim stating that the disability of the petitioner is 15% to 19% vide their communication dated 03-06.07.2000. This was informed to the petitioner vide letter dated 03.08.2000. Again a Re-survey Medical Board was held on 04.03.2005 at Base Hospital Delhi Cantt and the disability of the petitioner was considered as aggravated by military service and assessed at 15% to 19% for life. The petitioner preferred an appeal on 16.03.2009 against the assessment of the Re-survey Medical Board dated 04.03.2005 and the same was forwarded to IHQ of MoD (PS-4) vide The GRENEDIERS Records letter dated 04.06.2009. Thereafter, the petitioner filed a Writ Petition No.9443/2009 before the High Court of Delhi wherein the High Court has directed the respondents to decide the appeal of the petitioner dated 16.03.2009 within six weeks. In pursuance of the directions of the High

Court, a Re-survey Medical Board of the petitioner was held on 26.08.2009 and the medical board assessed his disability @20% for life and after that the authorities released the pension to the petitioner.

7. In this background, the grievance of the petitioner is that since he was entitled to disability pension as per first Medical Board which was held in 1995 which recommended the disability of petitioner to the extent of 20%. But it is strange that PCDA (P), Allahabad on three occasions consistently rejected the claim of the petitioner when three medical boards have held him entitled to 20% disability on 11.03.1995, 29.04.2000 and 04.03.2005. The consistent assessment by the medical board has been turned down by the PCDA (P) Allahabad without examining the case of the petitioner physically. The Hon'ble Supreme Court in the matter of **Ex. Sapper Mohinder Singh Vs Union of India in Civil Appeal No.164 of 1993** have held that;

*"We have examined the relevant materials and we do not feel satisfied with the plea taken in the counter affidavit. No details of the consultation has been disclosed by the respondent nor it is claimed that the appellant has been re-examined by any higher medical authority. We are not prepared to set on the vague allegations in the counter affidavit referred to above. In view of all the relevant circumstances of the case we are of the opinion that the Disability Pension assessed at the rate of 40% by the Medical Board which had examined appellant, should be respected until fresh Medical Board examined the appellant again reached different conclusion."*

8. Therefore, in the present case, we are sorry to record the PCDA (P), Allahabad's functioning that when duly constituted medical boards as per rules are giving consistent opinions that disability of the petitioner is aggravated by military service and quantified the same to the extent of 20%, no reason has been given by the PCDA (P) Allahabad to reduce the disability of the petitioner to 15% to 19% i.e. below 20%. This kind of quantification

appears to be very strange. In 2009, fourth time the Medical Board assessed the disability of the petitioner to the extent of 20%. After that his disability pension was released. There is no reason for us not to accept the grievance of the petitioner when the disability of the petitioner was assessed at 20% by the medical board in 1995. The grievance of the petitioner is genuine and he has been consistently put to medical boards and the medical boards have periodically held that incumbent is entitled to disability pension to the extent of 20%.

9. Though the petitioner is belated before us, but looking to the facts that he has been continuously appearing before the medical boards in 1995, 2000, 2005 and 2009 and all the medical boards have assessed the disability of the petitioner to the extent of 20%, there is no reason why he should not be given the disability pension @20% when the first medical board was held in 1995.

10. Consequently, we allow this petition and direct the respondents that he shall be given disability pension @20% from March 1995 onwards and the arrears should be worked out and be paid to the petitioner with interest @12% p.a. till he was released the pension in 2009.

11. Petition stands allowed. No order as to cost.

**A.K. MATHUR**  
**(Chairperson)**

**M.L. NAIDU**  
**(Member)**

**New Delhi**  
**August 23, 2012**  
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