

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

22.

O.A. No. 542 of 2011
With M.A. No. 497 of 2011

Ex Signmn Chander Ballabh Joshi

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. V.K. Sharma, Advocate.
For respondents: Dr. S.P. Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. S.S. DHILLON, MEMBER.

ORDER
05.11.2012

1. Petitioner by this petition has prayed that the disability pension and service element be awarded in terms of Regulation 173 read with Regulation 185(a) of Pension Regulations for Army, 1961 with effect from 17th February 1997 and 31st October 2001 respectively.

2. Petitioner joined the Army in the Corps of Signals on 27th February 1967 and was medically invalided out on 10th June 1967 after serving 4 months and 12 days while undergoing training. On 10th June 1967 he was medically invalided out due to bilateral open pulmonary TB, a disease attributable to and aggravated by military services. He was sent for Resurvey Medical Board ('RSMB') in June 1968, September 1969, December 1971 and September 1973 vide Signals records letter

dated 7th February 1975. Then he was again put through RSMB in the year 1985 and was sanctioned disability pension with effect from 31st July 1985 to 14th April 1995. Thereafter he was asked to appear for RSMB and it was mentioned that the percentage of disability re-assessed by previous Medical Board CCDA (P) was 20% which implied that during RSMB in 1985 his percentage of disability was 20%. On 5th June 1997, Respondents resumed his service element of pension with effect from 17th February 1997 because the disability pension was discontinued from that date since his disability was brought down to 11 to 14% from 20% by the Medical Advisor (Pension) attached with PCDA (P) Allahabad. On 5th June 1997, despite the fact that his disability was reduced to 11-14% from 20%, he continued to receive service element of disability pension with effect from 17th February 1997. He has alleged that he does not know whether the pension he received from 17th February 1997 till 31st October 2001 was on account of disability pension or service element only. Then again he was put through RSMB in 2001 and his disability pension was discontinued with effect from 31st October 2001. It is also alleged that after RSMB in 2001 his service element and disability element both were illegally discontinued by Medical Advisor at PCDA (Pension) Allahabad disregarding the findings of RSMB. He has alleged that he was without any pension since 31st October 2001. He filed his statutory appeal against this arbitrary action of medical authorities and it was rejected on 31st October 2011. Therefore, he has approached this Tribunal by filing the present petition with aforesaid prayers.

3. A reply has been filed and the Respondents have pointed out that the Petitioner was granted disability pension continuously by PCDA (P) Allahabad as per

the recommendations of the various RSMB till 16th February 1997. His RSMB was carried out on 31st October 1996 at Military Hospital, Dehradun which regarded the disability at 20% for two years but when his claim for disability benefits was submitted to PCDA (P) Allahabad for adjudication, the Military Advisor (Pension) at PCDA (P) Allahabad has reviewed and re-assessed his disability as 11 to 14% i.e. less than 20% for five years from 17th February 1997 to 30th October 2001 and rejected his disability pension claim by letter dated 29th April 1997 and the decision was communicated to the Petitioner on 5th June 1997 with an advise to prefer an appeal. Then Petitioner was again brought before RSMB on 8th August 2001 at Military Hospital, Roorkee which regarded his disability as 11-14% for life. However, the disability pension claim in respect of the Petitioner was forwarded to PCDA (P) Allahabad, the statutory body of pension sanctioning authority, and same was rejected on the plea that his disability was assessed as less than 20% for life. This was communicated to the petitioner on 31st December 2011. He filed an appeal on 31st January 2011 against the decision of PCDA (P) Allahabad, after 10 years, and suitable reply was given to the Petitioner by Signals Records by letter dated 9th August 2011. He sent a legal notice dated 21st July 1997 through his counsel which was suitably replied by Signals Records by letter dated 26th August 1997.

4. Now the only question before us is whether service element has been discontinued rightly or not, since his disability pension has ceased to be paid to him because his disability has dropped below 20%, and that cannot be now undone because of the long intervening period which has lapsed since then. Therefore the question that remains is with regard to payment of service element to the Petitioner, which has been discontinued. It was submitted by Respondents that Petitioner is not

eligible for service element as he does not fulfil the criteria in accordance with Regulation 186 of the Pension Regulations. As per Regulation 186 of the Pension Regulations, as it existed at the relevant time, if a person has not completed 10 years of qualifying service on the date of discharge/retirement, he may with effect from the date following that of termination of disability pension, and for so long as the accepted degree of disablement remains less than 20%, be granted special pension in accordance with Regulation 167 read with Regulation 165. However, if he is granted gratuity for a temporary disability then only half the amount of gratuity shall, be paid when the accepted degree of disablement is re-assessed temporarily below 20%, and the other half shall be paid only when the assessment of less than 20% is regarded as permanent.

5. We have considered the submissions of the parties.

6. So far as the discontinuation of service element from 1997 is concerned, contention of Respondents is not correct since Para 186 which was in existence at that time reads as under:

"186(1) An individual who is invalided out of service with a disability attributable to or aggravated by service but assessed at below 20% shall be entitled to service element only.

(2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20%. He shall however continue to draw the service element of disability pension."

It clearly says that even if the disability falls below 20% the disability element may be discontinued, but he shall continue to draw the service element of pension. Therefore, so far as case of Petitioner with regard to service element is concerned, it has been wrongly denied to the Petitioner since 2001. Moreover this question has been clarified by the Ministry of Defence and same has been brought to the notice of the Hon'ble Supreme Court in Civil Appeal No. 2942 of 2009 in which it has been clearly mentioned that service element will be given to persons who have been invalidated out of service prior to 1973, with less than minimum qualifying service for pension, as prescribed from time to time. They will be entitled to service element of pension in all cases of pre-1973, with effect from 1st January 1973. The discontinuation of Petitioner's service element in 1997 is prima facie illegal. Although the present plea of the Petitioner is belated, but in view of the decision of the Hon'ble Supreme Court, and the decision of the Government, the Petitioner is entitled to service element of pension even though his disability has been reduced below 20%.

7. We direct that the service element of the pension should be released to the Petitioner from the date it has been discontinued and the same shall continue to be paid to him. The amount should be worked out and released to him with 12% interest, as far as possible within three months. It is made clear that if any amount is paid to the Petitioner as special gratuity the same shall be deducted against this service pension arrears now being released to him.

8. With this observation, the petition and application are disposed of. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
November 05, 2012
dn/pd