

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
15.

O.A. No. 86 of 2012
With M.A. No. 125 of 2012

Lt. Sumeet Malhotra

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. Akhil Sachar with Mr. K. Ramesh, Advocate.

For respondents: Mr. R. Balasubramanian, ASG with Mr. J.S. Yadav, Advocate.

CORAM:

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

HON'BLE LT. GEN. S.S. DHILLON, MEMBER.

ORDER
31.10.2012

1. Petitioner by this petition has prayed that the Respondents may be directed to grant him disability pension @ 100% from 31st October 1997 till date and for life with all its arrears @ 13% penal interest till the date of final payment to the Petitioner by relying on Govt. of India-Ministry of Defence policy letter dated 7th February 2001, or alternatively, if his medical condition has significantly improved as is made out then he may be subjected to Medical Categorisation Board and if declared medical category P-2 then the Petitioner be reinstated with all its inherent consequential benefits.

2. Petitioner was commissioned as an Army officer on 10th December 1994 and unfortunately he was diagnosed as a case of pulmonary tuberculosis and as per the Medical Board held on 31st October 1995, he was invalided out of military service on 13th March 1996 with 100% disability for a period of two years, attributable to military service and he was getting a disability pension @ 100% till 30th October 1997.

Thereafter his disability was reduced to 80% for a period of two years from 31st October 1997 till 28th October 1999 and thereafter it is alleged that his disability was reduced to 50% from 29th October 1999 till 31st December 2010 and then from 4th December 2010 for life it was reduced to 20%.

3. The grievance of the Petitioner is that when his disability was reduced to 50% from 31st October 1997 till 29th October 1999, he was never called for Medical Board and no medical authority recommended that his disability has reduced to 50%. It is only on 31st October 2010 when he was called and his disability was reduced to 20%. Therefore, he has prayed that he may be granted the entire disability @ 80% in light of the circular dated 31st January 2001 and 7th February 2001.

4. A reply has been filed by the Respondents and the Respondents have contested the petition to the extent that it is true that he was invalided out of service but his disability of 100% was only for a period of two years but in 1997 he was again asked to go for Medical Board and his disability was reduced to 80% but subsequently how it was reduced from 80% to 50%, the Respondents are unable to explain whether the incumbent was sent for Medical Board. The Petitioner has submitted that he was never called for Medical Board except in 2010. From the record it does not transpire that any time Petitioner was called for Medical Board and how the disability has been reduced from 80% to 50%. Therefore, the contention of learned counsel for the Petitioner is that since Petitioner has not been called for Medical Board and as such the authorities have arbitrarily reduced his disability from 80% to 50% without Medical Board, therefore, his disability shall be treated to be 80% till he was called by the Medical Board on 27th October 2010. In this

connection, learned counsel for the Petitioner has invited our attention to circular dated 31.01.2001 wherein Para 7.2 it is clearly mentioned that if a person is invalidated out with disability from 76% to 100% then he is entitled to 100% disability. The contention of learned counsel for the Petitioner appears to be justified since he has not been asked to go for Medical Board and his disability was arbitrarily reduced to 50% from 80%, therefore, Petitioner shall be deemed to have continued with 80% disability as no Medical Board has examined the disability for reducing it to 50%. Learned counsel for the Respondents has not been able to point out whether while reducing this disability to 50% was he called for Medical Board and on the contrary in the reply they have taken the position that though the HQ UP Area, Bareilly by the impugned letter dated 18th May 1999 requested 7 Air Force Hospital to carry out RSMB, however, as per the record no RSMB was held in absence of the Petitioner. Later as per HQ MB Area, Jabalpur by letter dated 27th October 2010 asked the Petitioner to appear before RSMB and then subsequently disability has been awarded 50% from 29th October 1999 to 31st March 2004, 1st April 2004 to 31st December 2005 and 1st January 2006 to 3rd December 2010 and finally from 4th December 2010 disability pension has been granted @ 20% for life and PPO was notified by PCDA (P), Allahabad. Therefore, from this submission it is clear that the 50% reduction in disability was done arbitrarily retrospectively and without putting the incumbent for Medical Board. Therefore as such we will have to presume that the Petitioner had 80% disability till he was asked to go for Medical Board on 27th October 2010 and, therefore, as he was having a disability to the extent of 80% and as per the circular dated 31st January 2001 he is entitled to disability @ 100%. This amount should be worked out and paid to Petitioner. This will be done within three months.

5. Now after he has been examined by the Medical Board on 27th October 2010 and his disability has been reduced to 20% then the question is how much disability he is entitled to. As per the circular dated 31st January 2001 in case the disability is less than 20% and person has been invalided out of service then he is entitled to 50% disability pension. Accordingly while rounding up the disability in pursuance of the circular dated 31st January 2001 he is entitled to a disability to the extent of 50% from 27th October 2010 onwards. The Respondents shall work out the disability pension as directed and release the disability pension to the Petitioner with interest @ 12% p.a.

6. Learned counsel for the Petitioner has submitted that the Petitioner has not received any pension from 2000 till 2010. If it is so, the Respondents shall examine the matter and if he has not received the pension same shall be released to him as far as possible within a period of three months.

7. The petition is allowed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
October 31, 2012
dn/pd