

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Suppl.
1.

OA 1516/2018

Ex Hav Manoj Kumar Tyagi
VERSUS
Union of India and Ors.

..... Applicant

..... Respondents

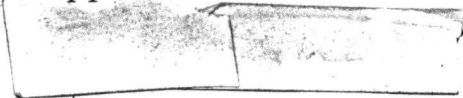
For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Ms. Jyotsna Kaushik, Advocate


CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
03.11.2023

Vide our detailed order of even date, we have allowed the OA 1516/2018. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.


(JUSTICE ANU MALHOTRA)
MEMBER (J)


(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1516 of 2018

In the matter of :

Ex Hav Manoj Kumar Tyagi

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Praveen Kumar, Advocate

For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM:

HON'BLE Ms. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

- (a) ***Quash and set aside the impugned order dated 25 May 2017 and RSMB dated 17 Jul 2015.***
- (b) ***Direct the respondents to consider the (II), (III), (IV)th disabilities of the applicant as attributable to and aggravated by military***

service as per the law laid down by Hon'ble Supreme Court. In case Dharamvir Singh Vs UOI & Ors (Civil Appeal No. 4949 of 2013) 2013 AIR SCW 4236.

- (c) Direct Respondents to grant Disability Pension @ 100% as recommended by IMB for life to the applicant with effect from 30 Aug 2014 (The date on which it was reduced to 50% by the respondents) with interest @ 12% p.a. till final payment is made.*
- (d) Direct the respondents to grant constant attendance allowance as the applicant is 100% disable and need the services of the attendant.*
- (e) Direct the respondents to grant one time Ex gratia amount as the applicant was invalided out from service and his five disabilities out of Eight were considered as attributable to service. Any other relief which the Hon'ble Tribunal may deem fit*

and proper in the fact and circumstances of the case.

BRIEF FACTS

2. The applicant, having been found medically and physically fit after thorough medical examination, was enrolled in the Indian Army on 28.02.1992 and was invalided out from service on 01.10.2011 being in low medical category S1H1A3P5E1. The Invalidment Medical Board (IMB) held on 19.09.2011 assessed the applicant's disabilities (i) HANSEN'S DISEASE (BT) @ 100% for 1 year; (ii) PORTAL VEIN THROMBOSIS @ 20% for life; (iii) DEEP VEIN THROMBOSIS (RT) LEG VEIN @ 20% for life; (iv) THROMBOPHILIA @ 20% for life; (v) CHRONIC CALCIFIC PANCREATITIS @ 20% for life; (vi) TUBERCULAR LYMPHADENITIS @ 50% for 2 years; (vii) FRACTURE SHAFT FEMUR (RT) OPTD @ 20% for life and (viii) SEGMENTS FRACTURAL TIBIA LT @ 20% for life. The composite assessment for all the disabilities has been done @ 100% for 1 year. The Net assessment qualifying for disability pension was also made as 100% for 1 year. Accordingly, the applicant was granted disability element of disability pension @ 100% for one year with effect from 01.10.2011 to



18.09.2012 vide PPO No. DE/011112/2012 (Army) dated 07.03.2012.

3. A Re-assessment Medical Board (RAMB) of the applicant was held on 30.08.2012 and the RAMB assessed his disability 'Hansen's Disease (BT)' @ 100% with duration of two years and accordingly, the applicant was granted disability element of disability pension @ 100% for two years with effect from 30.08.2012 to 29.08.2014 vide PPO No. DE/Corr/1312/2013 dated 21.11.2012. The applicant's second RAMB was held on 26.04.2014 and the applicant's disability 'Hansen's Disease (BT)' was assessed @ 20% for one year considering the balance of all other disabilities as co-morbidities and hence the applicant was again granted the disability element of disability pension @ 20% from 26.04.2014 to 25.04.2015 vide PPO No. DE/Corr/0276/2015 dated 21.11.2012 and the last RAMB held on 17.07.2015, assessed the first disability (Hansen's disease) of the applicant @ 20% for life considering the balance of other disabilities as co-morbidities and hence the applicant was granted the disability element of disability pension @ 20% for life (with rounding off benefit to 50%) with

effect from 17.07.2015 for life vide PPO No. DE/Corr/1146/2015 dated 23.11.2015.

4. The applicant sent a communication dated 29.03.2017 to the Senior Record Officer, Brigade of The Guards, Regiment Centre Kamptee, Distt. Nagpur for grant of disability pension in respect of all the disabilities suffered by him, which was forwarded to the Officer Incharge of the Brigade of the The Guards c/o 56 APO vide letter dated 01.04.2017 for further necessary action. Thereafter, vide letter dated 25.05.2017, the Senior Record Officer, Records, Brigade of The Guards c/o 56 APO communicated to the applicant justifying the grant of disability pension for Hansen's Disease also for a certain period. Aggrieved by the same, the applicant has filed the present OA. In the interest of justice, in accordance with Section 21(1) of the AFT Act, we take up the present OA.

CONTENTIONS OF THE PARTIES

5. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit medically and physically and no note was made in his medical record that the applicant was suffering from any

disease at that time. The learned counsel narrated various tough and challenging postings during his entire service career such as, in 1993, the applicant was posted to 15 Guards, Mirthal, where he had performed Guard duties round the clock and used to work till late nights from early mornings and thus hardly got time for adequate rest and proper sleep; he was posted to non-family stations and hard areas; from 1993 to 2000, the applicant was posted to Satwari, Jammu, a modified field area, and during this posting, the applicant actively participated in 'Ops Vijay' (Kargil War) during entire period of war in 1999. The learned counsel further submitted that from 13.02.2000 to 27.04.2000, the applicant again participated in 'Op Rakshak' in J&K; the applicant again took active part in 'Op Parakaram' from 28.04.2002 to 28.08.2002 and was thereafter posted to the Rajasthan Sector. The learned counsel submitted that the applicant was posted to a field area in Sikkim, Eastern Sector from 29.08.2002 to 22.12.2002 and contended that all the above field postings, have different and difficult climatic and environmental conditions like extreme hot climate or extreme cold climate

etc., and participation in various CI operations as mentioned above, has put enormous stress and strain on the applicant's mental and physical health and due to which, in the year 2007, the applicant suffered with the diseases where blood clots blocks the blood vessels, i.e. Portal Vein Thrombosis (19.04.2007), Deep Vein Thrombosis (Rt) Leg and Thrombophilia (27.08.2007).

6. The learned counsel further submitted that on 20.03.2008, the applicant was detected with Tubercular Lymphadenitis due to the infection contracted during service and again on 01.09.2009, the applicant was diagnosed with Hansen's Disease (BT) and on 13.07.2010, he suffered from Chronic Calcific Pancreatitis, both due to infection contracted during service. The learned counsel further submitted that other disabilities suffered by the applicant were 'Fracture Shaft Femur (Rt) Optd' and 'Segments Fracture Tibia Lt' (both 05.02.2011). The learned counsel submitted that whilst the disabilities (i) Hansen's Disease, (v) Chronic Calcific Pancreatitis, (vi) Tubercular Lymphadenitis, (vii) Fracture Shaft Femur (Rt) Optd and (viii) Segments Fractural Tibia (Lt) were opined as attributable to and

connected with military service by the IMB, the disabilities (ii) Portal Vein Thrombosis, (iii) Deep Vein Thrombosis and (iv) Thrombophilia were found as neither attributable to nor aggravated by military service, which is unjustified in the eyes of law.

7. The learned counsel further submitted that RAMBs held from time to time confined to the only one disease i.e. Hansen's Disease and the last RAMB held on 17.07.2015, wrongly assessed Hansen's Disease and considered other disabilities as co-morbidities, as 20% for life and thus the applicant was granted disability pension @ 20% with rounding off to 50% for life. The learned counsel further submitted that the respondents failed to appreciate the provisions contemplated under Rules 5 and 14(b) of the Entitlement Rules for Casualty Pensionary Awards, 1982 (hereinafter referred to as 'Entitlement Rules, 1982'), which provide that in case of discharge from service in low medical category, if no note is on record at the time of joining of service, the deterioration in health is to be presumed due to service conditions. The learned counsel further relied on various provisions of the Entitlement Rules, 1982 to submit

that any disease contracted during service, would be presumed to be attributable to service and worsening of the same during service would be treated as aggravated by military service and onus to prove otherwise lies with the respondents only.

8. The learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]*** ***Union of India Vs. Rajbir Singh [(2015) 12 SCC 264]***, which have been considered and taken note of by the Hon'ble Apex Court in many judgments, wherein the Hon'ble Supreme Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on

medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service. Referring to Rule 9 of the Entitlement Rules for Causality Pensionary Awards, 1982, the learned counsel for the applicant submitted that the applicant should have been given benefit of doubt and the disabilities (ii) Portal Vein Thrombosis, (iii) Deep Vein Thrombosis and (iv) Thrombophilia should have been conceded attributable to/aggravated by service only. The learned counsel submitted that the Tribunal has already granted disability pension to many similarly situated persons.

8. *Per contra*, the learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed since the IMB, being an Expert Body, found the disabilities (ii) Portal Vein Thrombosis, (iii) Deep Vein Thrombosis and (iv) Thrombophilia as "Neither Attributable to Nor Aggravated by Military Service" for the reasons

mentioned therein. The learned counsel submitted that at the time of recruitment, only primary investigations were carried out and it could not detect any inherited or endogenous or constitutional or genetic diseases; as all diseases are not detectable at the time of enrolment, the disability in question are assessed appropriately as NANA. The learned counsel further submitted that from time to time RAMBs were carried out and on the basis of the recommendations of the medical boards, the applicant was suitably granted disability element of pension. The learned counsel submitted that the Constant Attendance Allowance, as claimed for by the applicant, is only admissible to the individual getting 100% disability pension. The learned counsel, therefore, prayed for dismissal of the OA.

ANALYSIS

9. We have heard the learned counsel for the parties and have gone through the records produced before us.

10. It is an undisputed fact that at the time of joining the Indian Army on 28.03.1992, the applicant was found medically and physically fit and he was detected with the first disease in 2007 i.e. after 15 years of service and then the

other disabilities followed. The dates of onset of the disabilities as recorded in the IMB are given as under :

| Sl. No. | Disabilities | Date of origin of the disease |
|---------|------------------------------------|-------------------------------|
| (i) | Hansen's Disease (BT) | 01.09.2009 |
| (ii) | Portal Vein Thrombosis | 19.04.2007 |
| (iii) | Deep Vein Thrombosis (RT) Leg Vein | 27.08.2007 |
| (iv) | Thrombophilia | 27.08.2007 |
| (v) | Chronic Calcific Pancreatitis | 13.07.2010 |
| (vi) | Tubercular Lymphadenitis | 20.03.2008 |
| (vii) | Fracture Shaft Femur (RT) Optd | 05.02.2011 |
| (viii) | Segments Fracture Tibia (LT) | 05.02.2011 |

which go to show that all the disabilities have occurred during service. Whilst the disabilities (i) Hansen's Disease, (v) Chronic Calcific Pancreatitis, (vi) Tubercular Lymphadenitis, (vii) Fracture Shaft Femur (Rt) Optd and (viii) Segments Fractural Tibia (Lt) were held as 'attributable to military service' by the IMB, however, disabilities (ii) Portal Vein Thrombosis, (iii) Deep Vein Thrombosis and (iv) Thrombophilia were opined as neither attributable to nor aggravated by military service. All these disabilities led to the invaliding out of the application from service on 01.10.2011 in low medical category S1H1A3P5E1.

11. The law on the issue of attributability or aggravation of a disability is already settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India [(2013) 7 SCC 316]***, which has been followed in subsequent decisions of the Hon'ble Supreme Court and in a catena of orders of this Tribunal, wherein the Apex Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable

to nor aggravated by military service. The guidelines laid down vide the verdict in *Dharamavir Singh (supra)* are as under:-

"28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

- (vi) *If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and*
- (vii) *It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 - "Entitlement : General Principles", including paragraph 7, 8 and 9 as referred to above."*

12. The Hon'ble Supreme Court in the case of ***Union of India & Ors. Vs. Rajbir Singh [Civil Appeal Nos. 2904 of 2011]*** decided on 13.02.2015, after considering the case in *Dharamvir Singh (supra)* upheld the decision of this Tribunal granting disability pension and observed as under :

"15. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service....."

13. The 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008', which take effect from 01.01.2008 provide vide Paras 6,7,10 and 11 thereof as under:

"6. Causal connection:

For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.

Onus of proof:

Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/invalidment/ release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.

10. Attributability:

(a) Injuries:

In respect of accidents or injuries, the following rules shall be observed:

- i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).*
- ii) In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.*

(b) Disease:

(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-

- (a) that the disease has arisen during the period of military service, and*
- (b) that the disease has been caused by the conditions of employment in military service.*

(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contracted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical courses as determined by the competent medical authority.

(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability

should be conceded on the basis of the clinical picture and current scientific medical application.

(iv) when the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.

11. Aggravation:

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High Altitude etc.”

Thus, the ratio of the verdicts in ***Dharamvir Singh Vs. Union of India & Ors.*** [(2013) 7 SCC 316) and ***Union of India Vs. Rajbir Singh*** [(2015) 12 SCC 264], as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

14. Furthermore, Regulation 423 of the Regulations for the Medical Services of the Armed Forces, 2010 which relates to 'Attributability to Service' provides as under:-

“423. (a). For the purpose of determining whether the cause of a disability or death resulting from disease is or not attributable to Service. It is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Area/Active Service area or under normal peace conditions. It is however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidences both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency,

which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in case occurring in Field Service/Active Service areas.

(b). Decision regarding attributability of a disability or death resulting from wound or injury will be taken by the authority next to the Commanding officer which in no case shall be lower than a Brigadier/Sub Area Commander or equivalent. In case of injuries which were self-inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.

(c). The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in Service if no note of it was made at the time of the individual's acceptance for Service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(d). The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify

reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, in so far as it relates to the actual causes of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority.

(e). To assist the medical officer who signs the Death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on :

(i) AFMSF - 16 (Version - 2002) in all cases

(ii) IAFY - 2006 in all cases of injuries.

(f). In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the Col (Med) Div/MG (Med) Area/Corps/Comd (Army) and equivalent in Navy and Air Force."

(Emphasis supplied)

has not been obliterated.

15. In the present case, it is not disputed that the applicant, in his entire service career, was posted in different peace/field stations having different and difficult climatic and environmental conditions. The applicant had participated in various Operations i.e. 'Op Vijay', 'Op Rakshak' and 'Op Parakaram' which suggests that the wartime trauma or stresses and strains of operational service and the stress related to field area postings could be a cause of the

disability(ies) that he contracted and thus his medical conditions, which were serious enough to lead to invalidation of the applicant from service, can be considered as attributable to/aggravated by military service. It has already been observed by the Tribunal in large number of cases that military services have their own pressure of rigorous military training and associated stress and strain of the service which should be taken into consideration for the purpose of granting disability pension.

16. It may also be taken into consideration that the most of the personnel of the armed forces, during their service, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. Moreover, there is no note made in the medical documents of the applicant that he was suffering from any disease at the time of joining the service. There are no sufficient reasons or record to show that the applicant has suffered the disabilities due to hereditary reasons and admittedly, all the disabilities in question have occurred after serving for a long period. We are, therefore, of the considered view that the benefit of doubt in these circumstances should be given to the applicant in

view of the settled law by virtue of the verdict of the Hon'ble Supreme Court as referred to above on the point of attributability/aggravation and thus the disabilities (ii) Portal Vein Thrombosis, (iii) Deep Vein Thrombosis and (iv) Thrombophilia suffered by the applicant should be held attributable to/aggravated by the military service.

17. Furthermore, in the present case, initially the IMB held on 19.09.2011 assessed the disability ID Hansen's Disease (BT) of the applicant @ 100% for one year and the next RAMB held on 30.08.2012, assessed the said disability of the applicant @ 100% for two years, for which he was granted disability element of pension. In this regard, we may refer to the GoI, MoD letter dated 07.02.2001 whereby in Para 7, it was provided that :

"7. (Re-assessment of disability): There will be no periodical reviews by the Resurvey Medical Boards for Re-assessment of disabilities. In case of disabilities adjudicated as being of a permanent nature, the decision once arrived at will be and for life unless the individual himself request for a review. In cases of disabilities which are not of a permanent nature, there will be only one review of the percentage by a Reassessment Medical Board, to be carried out later, within specified time frame. The percentage of disability assessed/recommended by

the reassessment Medical Board will be final and for life unless the individual himself asks for a review. The review will be carried out by review Medical Board constituted by DGAFMS. The percentage of disability assessed by the Review Medical Board will be final....."

[Emphasis supplied]

18. From the above, it is clear that where the disability is not of a permanent nature, there will be only one review of the percentage by a Reassessment Medical Board, to be carried out later, within specified time frame, which would be treated as final and for life, unless the individual himself asks for a review. In the instant case, the disability of the applicant 'Hansen's Disease' was assessed @ 100% for one year by the IMB and thereafter, an RAMB was conducted on 30.08.2012 to re-assess his disablement and the RAMB assessed the said disability @ 100% for two years. Admittedly, the applicant herein has never requested for re-assessment of his disabilities. Therefore, in view of the GoI, MoD policy letter dated 07.02.2001, the assessment of the disability 'Hansen's Disease' by the aforesaid RAMB @ 100% is to be treated as final and for life.

19. Furthermore, with regard to the disability of the applicant assessed for a particular period, the verdict of the Hon'ble Supreme Court in the case of **Commander Rakesh Pande Vs. Union of India & Ors. [Civil Appeal No. 5970 of 2019]** decided on 28.11.2019, after taking note of the Para 7 contained in MoD letter dated 07.02.2001, reproduced hereinabove, granted the disability element of pension to the appellant for life observing to the effect :

"Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual himself requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @ 50% for life."

though the AFT in O.A. No. 1532 of 2016 granted the disability pension for five years.

20. Although, apart from the disability (i) Hansen's Disease, other disabilities (v) Chronic Calcific Pancreatitis,

(vi) Tubercular Lymphadenitis, (vii) Fracture Shaft Femur (Rt) Optd and (viii) Segments Fractural Tibia (Lt) were held as attributable to and connected to military service and initially assessed by the IMB individually @ 20% for life, in the first RAMB held on 30.08.2015, the medical board only assessed 'Hansen's Disease' and did not take into account all the other disabilities. Thereafter, the subsequent RAMBs had assessed Hansen's Disease but considered all other disabilities as co-morbidities and percentage of disablement was given as 20% without any justification given for assessing all the disabilities @ 20% only, despite the fact that the disabilities (v), (vi), (vii) and (viii) were individually assessed earlier @ 20% for life. However, as the percentage of the disability (i) Hansen's Disease has been considered as 100% for life, as brought out in Para 18 above, we do not delve into assessment of all other disabilities for the purpose of grant of disability element of pension to the applicant as consideration of the other disabilities would not make a difference in assessment.

21. In view of the aforesaid judicial pronouncements and the parameters referred to above, as the applicant has

already been granted the disability element of pension @ 100% from the date of invalidment i.e. 01.10.2011 till 29.08.2014, now the applicant is entitled to the disability element of pension @ 100% for life in respect of the disability Hansen's Disease from 30.08.2014 (when the disability element was reduced and paid @ 50%), after adjusting the disability element of disability pension already paid to the applicant since 30.08.2014. As far as the prayer for constant attendant allowance is concerned, as the IMB has not recommended for the same and in view of the Regulation 89(a) of the Pension Regulations for the Army, 1961 (Part-I), 2008, the said prayer is rejected.

CONCLUSION

22. Therefore, the OA 1516 of 2018 is allowed to the effect that the respondents are directed to grant the disability element of pension to the applicant @ 100% for life for the disability of Hansen's Disease from 30.08.2014 (when the disability element was reduced and paid @ 50%), after adjusting the disability element of disability pension already paid to the applicant since 30.08.2014.

23. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within three months from the date of receipt of copy of this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment. However, as the applicant has filed the present OA after a considerable delay, in view of the law laid down in the case of ***Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]***, arrears will be restricted to commence to run from three years prior to the date of filing of this OA i.e. 04.09.2018.

24. There is no order as to costs.

Pronounced in open Court on this 3rd day of November, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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