

**COURT NO. 1, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**O.A. No. 1830 of 2018**

**with**

**M.A. No. 2032 of 2018**

**In the matter of :**

**Ex Sep Jaipal Singh**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant :** Shri U.S. Maurya and Shri Trilok Chand, Advocates

**For Respondents :** Ms. Jyotsna Kaushik, Advocate

**CORAM :**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE LT GEN P.M. HARIZ, MEMBER (A)**

**ORDER**

**M.A. No. 2032 of 2018 :**

Vide this application, the applicant seeks condonation of delay of 7937 days in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]** and in **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, delay in filing the OA is condoned.

MA stands disposed of.

**O.A. No. 1830 of 2018 :**

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, who is aggrieved by the impugned order dated 05.02.1998 vide which the disability pension was discontinued with effect from 13.02.1996.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 18.11.1971 and was discharged from service on 21.11.1975 after 04 years and 04 days' service. Thereafter, the applicant was re-enrolled in the DSC of the Army on 16.10.1976 and due to being in low medical category, he was discharged from that service with effect from 31.10.1991 in low medical category EEE (P). The Release Medical Board (RMB) held in February, 1991 assessed the applicant's disability i.e. CHRONIC DUODENAL ULCER @ 30% for five years and held the same as 'aggravated by military service due to dietary compulsion in service'. Accordingly, the applicant was granted service pension vide PPO No. S/C/1537/91 and the disability pension vide PPO No. D/E/296/92 for five years.

3. After expiry of five years, the applicant was brought before the Re-assessment Medical Board (RAMB) in November, 1995, which held the disability as aggravated by military service and assessed the disability @ 20% for five years i.e. from 13.02.1995 to 12.02.2001. However, the applicant's claim for disability pension for the above period was rejected by the CCDA (P) Allahabad by reducing the percentage of disability from 20% to 6-10% and, therefore, the disability pension was discontinued by the respondents.

4. Aggrieved by the discontinuation of the disability pension, the applicant preferred first appeal dated 14.09.1996, which was rejected by the First Appellate Authority, GoI, MoD vide letter dated 05.02.1998 on the ground that the CCDA (P) Allahabad assessed the disablement at less than 20% (6-10%). Thereafter, the applicant, after obtaining the copy of medical board proceedings through RTI application dated 16.04.2016 and appeal dated 24.05.2016, sent a legal notice dated 04.07.2016 seeking disability pension. The same was replied to by the DSC Records and the applicant was denied any relief. Hence, the present OA.

5. Learned counsel for the applicant submitted that when the RAMB held on 20.11.1995 assessed the disability @ 20% for five years and held the same as 'aggravated by military service', the CCDA (P) Allahabad had no authority to reduce the percentage of disablement of the disability already assessed by the RAMB after due physical examination of the applicant. Learned counsel relied on various judgments of various courts, particularly the judgment of Hon'ble Supreme Court in the case of **Ex Sapper Mohinder Singh Vs. Union of India & Ors. [Civil Appeal No. 164 of 1993]** decided on **14.01.1993**, wherein it was held that without physical examination of a patient, the higher formation cannot overrule the opinion of the medical board.

6. Learned counsel further referred to G.O.I, MoD policy letter dated 07.02.2001, vide which it was provided that no periodical reviews by the review medical board to be held in permanent nature of disability, unless the individual himself requests for the same, and decision once taken by the medical board will be final and for life. Therefore, the respondents committed grave error in reducing the percentage of the disability assessed by the RAMB held on

20.11.1995 because of which the disability element of pension was discontinued.

7. *Per contra*, learned counsel for the respondents submitted that percentage of disablement was reduced by the resurvey medical board and not by the CCDA (P) and thus the discontinuation of disability pension to the applicant is justified. He further referred to Para 179 of the Pension Regulations for the Army, 1961 (Part-I), which stipulates the primary conditions for grant of disability pension to the effect that "unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of disability which is attributable to or aggravated by military service and is assessed as 20% or over" and submitted that as the applicant's disability was re-assessed at less than 20%, the applicant is not entitled to get disability element of pension. Hence, learned counsel prayed that the OA be dismissed.

8. We have heard learned counsel for the parties and have perused the records.

9. It is not in dispute that in the instant case, the applicant was in receipt of disability element of pension till 12.02.1996. It is also not in dispute that the RSMB held on 20.11.1995 re-assessed the disability of the applicant as 20% for 5 years and held the same as 'aggravated by military service'. However, the disability percentage was interfered with by the sanctioning authority as is evident from the RSMB proceedings at Annexure A-5, wherein the details of previous medical boards are given as Para 16 which states that though the RSMB had assessed the disability as 20%, the sanctioning authority had reduced it to 6-10%. This was intimated to the applicant vide DSC Records letter dated 29.03.1996 at Annexure A-1. Thus, the disability percentage has been reduced without any physical medical examination of the applicant resulting in denial of disability element of pension to the applicant.

10. The issue of primacy of the opinion of a medical board and its overruling by an administrative authority is no more *res integra*. The Hon'ble Supreme Court in the case of **Ex Sapper Mohinder Singh Vs. Union of India & Ors.** [Civil Appeal No. 104 of 1993] decided on 14.01.1993, which was

relied upon by the High Court of Punjab & Haryana High Court in **Babu Singh Vs. Union of India and others** [C.W.P. No. 3296 of 2003] decided on 26.4.2006, has observed that without physical medical examination of the patient, the administrative authority/higher formation cannot sit over the opinion of a medical board. The observations made in the judgment in the case of *Ex Sapper Mohinder Singh (supra)* being relevant are quoted below :

***“From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core.”***

11. Thus considering the legal aspects emerging out of the aforesaid judgment of the Hon'ble Apex Court, we are of the view that the percentage of the disability for claiming disability pension was wrongly interfered with by the sanctioning authority, and is, therefore, unsustainable in law

when the RSMB held on 20.11.1995 had already assessed the disability @ 20% for 5 years. We, therefore, set aside the reduction of disability percentage from 20% to 6-10% by the sanctioning authority. Therefore, the applicant is entitled for continued grant of the disability element of pension w.e.f. 13.02.1996.

12. Furthermore, with regard to the disability of the applicant assessed for a particular duration and the fact that the applicant was discharged in low medical category EEE (Permanent), we may refer to the judgment of 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, wherein taking note of the GoI, MoD letter dated 07.02.2001, the Hon'ble Apex Court while upholding the decision of the Armed Forces Tribunal granting disability pension for five years to the applicant, granted the disability for life and observed as under:

***"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.***

***[Emphasis supplied]***

13. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for continuation of grant of disability element of pension in respect of disability 'Chronic Duodenal Ulcer' @ 20% for life from the date of discontinuation of disability element of pension i.e. 13.02.1996. Accordingly, we allow this OA and direct the respondents to grant the disability element of pension to the applicant @ 20% for life with effect from 13.02.1996 with rounding off benefit @ 50% for life, in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India Vs. Ram Avtar** (Civil Appeal No. 418/2012), decided on 10.12.2014. However, there being considerable delay in approaching the Tribunal, in view of the law laid down in *Tarsem Singh's case (supra)*, arrears will be restricted to three years prior to the date of filing of this OA on 12.11.2018.

14. The respondents are thus directed to calculate, sanction and issue the necessary Corrigendum PPO to the

applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, *failing which*, the applicant will be entitled for interest @ 6% p.a. from the date of receipt of copy of the order by the respondents.

15. In view of the above, pending MA(s), if any, stands closed. There is no order as to costs.

Pronounced in open Court on this 19<sup>th</sup> day of July, 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[LT GEN P.M. HARIZ]  
MEMBER (A)

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