

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

94.

**OA 1928/2018 WITH MA 2135/2018**

**Ex Nk Om Prakash** ..... **Applicant**  
**Versus**  
**Union of India & Ors.** ..... **Respondents**

**For Applicant** : Mr. Virender Singh Kadian, Advocate  
**For Respondents** : Gp Capt Karan Singh Bhati, Sr. CGSC with  
Mr. Prabodh Kumar, Sr. CGSC

**CORAM**

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

**ORDER**  
**03.04.2024**

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, who is aggrieved by the rejection of his claim disability element of pension by the Respondents vide impugned order dated 29.10.2018.

2. The applicant was enrolled in the Indian Army on 18.10.1965 and discharged from service on 30.11.1989 under Army Rule 13 (3) 1954 on his unwillingness to continue in alternative employment being placed in low medical category (herein referred to as LMC) CEE(P). At the time of discharge, the individual was placed in the LMC and his disability was diagnosed as "LOW BACK ACHE (724 e)".

3. The Release Medical Board (RMB) was held on 01.09.1984 which after physical examination of the applicant had assessed the applicant's disability @20% for two years, i.e from 30.11.1984 to 31.08.1986, and held the disease to be aggravated by the stress and strain of military service. The claim for disability pension in respect of the petitioner was processed to PCDA (P), Allahabad and the applicant was initially sanctioned disability element @20% for the said period vide PPO dated 26.03.1985.

4. Thereafter, on 07.06.1986 the applicant was brought before the Re-Survey Medical Board which assessed the disability of the applicant @20% for life. The PCDA(P) however, accepted the percentage of disability i.e @20% but restricted it to 10 years from 01.09.1986 to 06.06.1996. Further, on assessment of disability beyond 06.06.1996, another RSMB was conducted on 16.05.1996. The RSMB, so conducted, assessed the disability @20% for further 10 years which was reduced by the PCDA below @20% i.e. at 11-14% for 5 years from 07.06.1996 to 15.03.2001 vide letter dated 11.10.1996 which was communicated to the applicant vide EME record letter No.709890/RA-/Pen dated 28.10.1996.

5. The applicant was again brought before the RSMB to assess his disability on 11.09.2001 and assessed the disability @20% for 5 years. The said recommendation was not accepted by the PCDA and they again reduced the disability at 11-14% for life vide their letter dated 20.01.2002, aggrieved by which the applicant has filed the instant OA.

6. Learned counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. Learned counsel further submitted that the applicant was invalidated from service and his disability was held to be aggravated by service.

7. It was further submitted that according to Para 33 of Chapter VII of the Guide to Medical Officer, 2008 (GMO 2008) which deals with assessment of low backache, it is stated that the assessment of Low backache and Low backache with neurological Involvement should be at least 20% and 30-50% respectively. Further, the duration of award in low backache due to musculo-facial strain should be for a maximum period

of 5 years and in the other causes of low backache, award can be extended for further period depending on clinical and radiological finding. Therefore, in light of the aforesaid, the reduction of assessment by the PCDA(P) beyond 20% is untenable and unjustified.

8. Per contra, learned counsel for the respondents submitted that the claim of the applicant was rejected in 2002 and the applicant has not presented any appeal/ claim till expiration of 16 years and therefore, his claim should be rejected on the ground of delay and latches.

9. It was further pointed out by the respondents that at the time of discharge of the applicant i.e. as per Ministry of Defence letter No. 1(a)/81/Pen-C dated 22.11.1983 as amended vide Ministry of Defence letter No. 1(1)/81/D(Pen-C) dated 21.06.1996, the findings of the medical board, which are recommendatory in nature can be reviewed by the Competent Medical Authorities i.e. MA (P)/Joint Director AFMS (Pensions). The competent authority may, for reasons to be recorded in writing, alter or modify the recommendations of the medical boards. In light of the aforementioned letter the disability pension

of the applicant was rightly discontinued by PCDA (P) Allahabad under the powers vested to them by the Ministry of Defence vide aforesaid policy letter.

10. We have heard the arguments of the Learned Counsel for the Applicant as well as the Respondents and have carefully perused the material placed on record. It is without a doubt that the disability was assessed @20% for 2 years by the Release Medical Board, and that it was held to be aggravated by military service. However, before adjudicating the rival claims, it would be appropriate to reproduce the assessment made by the RMB and RSMB, along with the assessment accepted by the PCDA(P), in a tabular form to the effect:

S. No.	Assessment by RMB/RSMB	Assessment accepted by PCDA	Period of Assessment	DP Granted/ Not Granted
1.	20% for 2 years	20% for 2 years	30.11.1984-31.08.1986	Granted
2.	20% for life	20% for 10 years	01.09.1986-06.06.1996	Granted
3.	20% for 10 years	11-14% for 5 years	07.06.1996-15.03.2001	Not granted
4.	20% for 5 years	11-14% for life	16.03.2001 - For life	Not granted

11. An analysis of the aforementioned table shows that the assessment made by the RSMB at S. No. 2 was 20% for life, but the recommendation of the RSMB was overruled by the PCDA and

it reduced the period of assessment as assessed by RSMB, and held the disability to be for a period of 5 years only. Similarly, at Sl. No. 3, we find that the disability was assessed to be 20% for 10 years, but the PCDA while overruling the assessment accepted the assessment to be 11-14%, and reduced the period of assessment from 10 years to 5 years. Similar trend is followed by Sl. No. 4 as well, wherein PCDA has accepted the assessment to be 11-14%.

12. On a perusal of aforesaid contentions, and the documents placed on record, we are of the view that the only primary question which requires adjudication by this Tribunal, is whether the PCDA has power to overrule the opinion of the duly constituted Medical Board ?

13. It is a settled law that the opinion of the duly constituted Medical Board containing a panel of expert doctors should be given primacy and credence. As regards the primacy of medical opinion, we find that in judicial pronouncement of **Secretary, Ministry of Defence and Others** Vs. **A V Damodaran [dead] through LRs** [(2009) 9 SCC 140] and Others, Honourable Apex

Court while discussing the importance and relevance of an opinion of a Medical Board, laid down following principles:-

*"8. When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medial category which is lower than „AYE“ (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/invalidating medical board. The said release/invalidating medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same, they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/recommended in the form of AFMSF-16. The Invalidating Medical Board forms its opinion/recommendations on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and, of course, the physical examination of the individual.*

*9. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the manner for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service."*

14. Furthermore, we find that with respect to grant of disability pension, vis-a-vis assessment of disability, Hon'ble Delhi High Court in the cases of Ex.Cfn. **Sugna Ram Ranoliya** Vs. **Union of India and Ors.** [WP(C) No. 3699/2004] and **Rajender Singh** Vs. **Union of India and Ors.** [WP(C) No. 13733/2005] has strongly reiterated that once a certificate has been issued by the Medical Board, entitling the member of the Force to disability pension this benefit cannot be withdrawn by the CCDA(P) on his own without holding an Appellate Medical Board in accordance with law. This view has been formulated on the simple logic as to how the accounts branch dealing with pension can sit over the judgment of medical experts who had the occasion to examine the records and the member of the Force.

15. In **Rajender Singh** (supra), Hon'ble Delhi High Court observed to the effect:-

*"7. In the judgment of the Division Bench of this Court in Ex Const.Jasbir Singh (supra), reference was made to another Division Bench judgment of this Court in the case of Ex.Signalman Sri Bhagwan. In the Judgment of the Court in Sri Bhagwan's case the consistent view taken by the Court is that the jurisdiction of the PCDA(P) is a very limited one and at best it can refer back the case to the competent authority for replying to the queries, if any, raised by the pension authorities that too in accordance with rules but it certainly*

*has no jurisdiction to take a view contrary to the view of the Medical Board. Arbitrary non-acceptance of view of the Medical Board would be in violation to the rules as well as the principles of law stated by the Courts. In all the above cases, the Courts have dealt with the provisions entitling the member of the Armed Forces to receive disability pension. There is no divergence of view in regard to ambit and scope of power of PCDA(P) and binding nature of the opinion of the Medical Board constituted in accordance with rules. Regulation 173 of the Pension Regulations for Army, 1961 Appendix II relates to grant of entitlement for disability pension. Section 22 of the Army Act and the instructions issued by the competent authorities as afore-referred, leave no doubt that PCDA(P) is vested with no jurisdiction of its own to reject issuance of PPO and disbursement of pension after receiving sanction of the competent authority in terms of AFMSF-16 accompanied by the medical opinion of the duly constituted Medical Board. Once conditions of Regulation 173 of the Pension Regulations, 1961 are satisfied, the jurisdiction of the PCDA(P) is very limited. Once the rules required the authorities to perform acts in a particular manner then it is expected that they would be done as required. Actiqualibet it suavia. In other words things should take the prescribed course and the prescribed procedure should not be permitted to be frustrated particularly by arbitrary exercise of power. In the case of S. Balachandran Nair (supra), the Supreme Court has clearly stated the nature and effectiveness of a medical opinion expressed by the appropriate Board in accordance with rules. Once the PCDA(P) transgresses its specified jurisdiction, their action would invite judicial intervention.*

*8. In view of the above settled position of law, the claim of the petitioner merits acceptance. Consequently, this writ petition is allowed. The respondents are directed to consider and grant disability pension to the petitioner as per the recommendations of the medical board, its acceptance by the administrative authorities and in conformity with the relevant rules."*

16. Reference in this regard can be made to a recent Division Bench judgment of this Court in the case of **JC 264149M Ex.**

**Naib Sub Marut Sharan Tiwari Vs. Union of India and Ors.**

[WP(C) 23320/2005; Date of decision: 13th July, 2006], where the court held as under:

*"...The scope of power of PCDA(P) is very limited and normally it would hardly have any jurisdiction to sit over the findings of the medical board. In a given case, it may refer the matter to a medical specialist, as envisaged under the army instructions but exceptions apart, as a matter of rule, the PCDA(P) would be bound by the findings of the medical board and would be obliged to carry out its responsibility in issuing the PPO and disbursement of pension to the concerned member of the force. The ambit and scope of its power has been the subject matter of controversy for quite some time. However, this question is no more res integra and is answered squarely by various pronouncements of different courts.*

**2. In the case of Janak Raj v. Union of India and Ors. CWP No. 16976 of 1998 decided on 23.12.1999 by the Punjab & Haryana High Court : 2000 (1) RSJ 706 wherein the medical board had opined that the disease was aggravated due to stress and strains of army service and disability of the petitioner was assessed at 40% and the CDA had refused to sanction the disability sanction being not attributable to army service, the court held as under:**

*The short question that falls for consideration of this Court in the present writ petition is whether the findings of the medical board could be altered to the prejudice of the petitioner by the C.D.A. and could the C.D.A. sit in judgment over the findings recorded by the medical board. This question is quite settled and does not call for any detailed discussion on the subject. It is a settled principle of law that the C.D.A. is not an expert body in regard to the determination of extent of medical disability or its attributability or aggravation to the military service. At this stage it will be appropriate to refer to the judgment of this Court in the case of Ujaagar Singh v. Union of India and Ors. 1997 (4) Recent*

*Service Judgments 587 where after detailed discussion, it was held as under:*

*From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is a very narrow compass viz whether the Chief Controller of defense 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 defense 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 and comment upon the extent of disability 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 Corp.*

*Somewhat similar defense was raised on behalf of the Union of India before the Hon'ble Apex Court in the case of Ex. Sapper Mohinder Singh v. Union of India Civil Appeal No. 164 of 1993 decided on 14th January, 1993, where the Court held as under:*

*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 allehgations 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 the reached different conclusion.*

*An identical stand was taken by the Union of India in the case of Mam Raj v. Union of India CWP No. 2302 of 1997 decided on 10.9.1996 by this Court where this Court held as under:*

*Instruction No. 27 under the head of "function and responsibilities" of Appendix II of these instructions at best empowers the Medical Authority so constituted to give its view about assessment of disablement restricted to the medical issues. The Medical Board (s) views and findings could be subject to any appellate view by the Director General, Armed Forces Medical Services whose view would be final. Nothing has been brought on record before us which would show that subsequent to the Medical Board, as a result of which the petitioner was discharged from Army was held by the competent authority and that gave any findings contrary to the view expressed by the earlier Medical Board.*

*XXX XXX XXX In view of the above settled principles and more particularly keeping in view the facts stated in the written statement itself this Court has no choice but to set aside the impugned orders as they suffer from any apparent error of lack of jurisdiction. As per rules C.D.A. Cannot sit in judgment over the findings of the medical board specially when the Government had referred the matter back to C.D.A. and sent reminders. In that event, the C.D.A. was expected to act in consonance with rules and settled law.*

*3. In the case of Ex. Sepoy Jagmel Singh v. UOI and Ors. CWP 12749/1998 decided on 16.3.2000 by the Punjab & Haryana High Court : 2000 (3) RSJ 88 wherein the petitioner was denied the disability pension by the CDA(P) Allahabad vide their letter dated 12th September 1988 holding that the disability was less than 20 per cent and as such he was not entitled to receive disability pension, though the medical board, after 9 years of petitioner's service and while placing the petitioner under permanent medical low category EEE on the opinion of the surgical specialist, stated that disability*

was more than 20 per cent. In that case, the court held as under:

*I have already noticed that the facts in the present case are hardly in issue and as far as the question of law is concerned that stood answered by the Division Bench of this Court in the case of Amar Nath v. Union of India and Ors. 1998 (1) All Instant Judgments, 478, where the court, after discussing the law in detail, held as under:*

*Once this certificate was issued in favor of the appellant entitling him to receive the disability pension, this benefit could not have been withdrawn by the Controller of defense Accounts (P), Allahabad on his own without holding appellate medical board in accordance with law. Exhibit D.3 while rejecting the claim of the appellant referred to period of 10 years previous of 25.6.1988 and disability being less than 20%. This was never put to the appellant prior to the passing of the order. If the appellant was entitled to the benefit in accordance with the rules on the strength of the disability certificate Ex.P.1, the appellant could not be divested of the same without following due process of law and after giving proper opportunity to the appellant which admittedly has not been done in the present case. The corollary to this main issue is as to whether the Controller of defense Accounts (P), Allahabad at all was justified in assuming the jurisdiction which is not vested in it under the rules. Under the relevant rules and instructions, the respondents have the authority to constitute an Appellate Board and disturb the findings arrived at by the first medical board which again was not done, it would not be permissible to disturb the findings without taking recourse to the relevant rules and instructions governing the subject.*

*XXX XXX XXX Reference can also be made to the decision rendered in L.P.A. No. 82 of 1997 titled as Union of India and Ors. v. Ex. Captain*

*Harbhajan Singh, decided on 25.4.1997. In the present writ petition, no details have stated in the counter affidavit filed on behalf of the Union of India nor any documents has been produced before us which could satisfy the above enunciated principles it has also been held that pension and likewise the disability pension is recurring cause of action and mere delay will not frustrate the claim of the petitioner.*

*Learned Counsel for the appellant has also relied upon the case of Ram Singh Jaggi v. Union of India and Ors. 1995(4) R.S.J. 807, where a Division Bench of the Himachal Pradesh High Court took the same view.*

*6. From the above settled principles of law, I have no hesitation in coming to the conclusion that the learned courts below have fallen in error in coming to the conclusion that the Controller of defense Accounts (P), Allahabad can disturb the findings of the medical board in the present manner. Admittedly, no evidence has been brought on record much less an expert evidence recorded by the medical officer to show that the finding recorded by the medical board where incorrect factually or otherwise.*

*7. Moreover, from the record, which has been produced by the learned Counsel for the parties, I find that a specific ground was raised before the learned first Appellant Authority that Controller of defense Accounts (P), Allahabad had no authority to express view contrary to the medical board. This contention has not been properly dealt with by the learned first Appellant Court. Keeping in view the instructions aforesaid there is no escape from setting aside the contents of exhibit D.3 being against the rule and settled law."*

17. We are of the view that the administrative decision taken by the respondents to deny disability element of pension to the applicant is against the decisions of the Hon'ble Supreme Court in

**Ex Sapper Mohinder Singh Vs. Union of India and another**

[C.A No. 164 of 1993; Date of decision: 14.01.1993] and ***Dharamvir Singh Vs. Union of India and others*** [(2013) 7 SCC 316]. The IHQ (Army) has also issued a letter dated 25.04.2011, the relevant portion of which is reproduced below:

*"2. These alterations in the findings of IMB/RMB by MAP (PCDA(P)) without having physically examined the individual, do not stand to the scrutiny of law and in numerous judgments, Hon'ble Supreme Court has ruled that the medical Board which has physically examined should be given due weightage, value and credence.*

.....

*4. All Command HQs are requested to instruct all Record Offices under their command to withdraw unconditionally from such cases, notwithstanding the stage they may have reached and such file be processed for sanction."*

18. In a catena of judgments (pointedly, O.A No. 270 of 2016 of AFT, RB, Chandigarh), this Tribunal has reaffirmed with consistency that due credibility and primacy has to be given to medical board proceedings. Whether it be the PCDA or an administrative authority, refutation of a medical opinion can only be by another more competent medical opinion. We do not find any justifiable reason on the part of the respondents in denying the disability element of pension to the applicant, especially when the Re-survey Medical Board dated 16.03.1996 and 11.09.2001

had determined the invaliding disease and assessed his disability @ 20% for 10 years and 20% for life respectively.

19. Noting the aforesaid, we are of the considered opinion that the applicant is entitled to grant of disability element of pension @ 20% for life w.e.f. 07.06.1996 i.e. the date from which the grant of disability element of pension was discontinued.

20. Further, in view of the judgment of the Hon'ble Supreme Court in **Union of India and others** Vs. **Ram Avtar** in C.A No. 418 of 2012 dated 10.12.2014, the applicant is entitled to get the disability element of pension broad banded to 50%, based on the Government notification dated 31.01.2001.

21. In the result, the O.A 1928/2018 is allowed directing the respondents to grant disability element of pension to the applicant @ 20% and broadband the same to 50% w.e.f. 07.06.1996 i.e. the date from which the grant of disability element of pension was discontinued. Needless to say the restriction of three years as laid down in the case of **Union of India & Ors.** Vs. **Tarsem Singh**, will not be applied herein, since the benefit granted to the applicant vide this order is the continuance in grant of disability element of pension wef 07.06.1996, which was stopped by the

Respondents. This is not a case where the applicant has been held to be entitled to grant of disability pension at a later stage by a judicial forum. Therefore, we are of the view that restriction on the arrears will not be applied in the instant case.

22. The respondents shall comply with this order within four months from the date of receipt of a copy of this order, failing which they shall pay interest @ 8% per annum on the entire arrears till the date of actual payment.

23. No order as to costs.

24. Pending miscellaneous application(s), if any, are closed.

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[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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[LT GEN C.A. MOHANTY]  
MEMBER (A)

/akc/