

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 2006/2018 With MA 2201/2018

Ex Hav Chittar Singh Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Mr. Ranjan Khosla, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

MA 2201/2018

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh (2009(1) AISLJ 371), the delay in filing the OA is condoned.

2. MA 2201/2018 stands disposed of.

OA 2006/2018

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

“(a) Direct the Respondents to grant Disability Pension @50% for life to the applicant with effect from 01 Sep 1985 i.e. the date of invaliding out from service with interest @12% p.a. till final payment is made.

(b) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."

BRIEF FACTS

4. Brief facts of the case are that the applicant was enrolled in the Indian Army (Corps of EME on 14.06.1966) and was discharged from service in low medical category with effect from 31.08.1985 due to his unwillingness to continue to serve in the military service. At the time of discharge, the applicant was placed in low medical category CEE (P). The Release Medical Board (RMB) held on 14.03.1985 assessed the applicant's disability of Lumbar Spondylosis @20% for two years and the same was held as 'aggravated by military service'. Accordingly, the applicant was granted disability pension @ 20% w.e.f. 01.09.1985 to 13.03.1987 and thereafter, the disability of the applicant was re-assessed by the RSMB @ 20% for two years, however, the applicant was granted disability pension @ 20% for ten years i.e. from 14.03.1987 to 23.04.1997. After expiry of ten years, another RSMB was held on 05.12.1996 which re-assessed the disability of the applicant @ 20%, but the PCDA (P) Allahabad rejected the claim as the disability was considered to be @ less than 20% (11-14%) for 5 years from 24.04.1997 to 04.12.2001 and, therefore, the disability pension was discontinued vide letter dated 26.05.1997. The decision of the PCDA (P) was

communicated to the applicant with an advice to prefer an appeal against the rejection of disability pension within six months.

5. On 08.12.2001, fresh RSMB of the applicant was conducted at MH Agra and the disability of the applicant was re-assessed @ less than 20% (11-14%) for life and the PCDA (P) again rejected the claim of the applicant as the disability was assessed at less than 20%. The applicant submitted a legal notice dated 08.01.2018 for grant of disability element of pension with rounding off benefit, which was suitably replied to the applicant vide EME Records letter No. 7106102/T-B/Court Case Cell dated 22.02.2018. Aggrieved of this, the applicant has filed the present OA. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(2) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

6. Placing reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]*, the learned counsel for the applicant submitted that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Army at various places in different environmental and service conditions in his prolonged service and thus thereby, any disability

that arose during his service has to be deemed to be attributable to or aggravated by military service.

7. The applicant also placed reliance on the verdicts of the Hon'ble Supreme Court in the case of *Deokinandan Prasad Vs. State of Bihar* AIR 171 SC page 1409, in TA No. 48/2009 in W.P. (C) 6324/2007 titled as *Nakhat Bharti vs. Union of India & Ors.*, in TA No. 208/2010 (WP (C) 9764/2009 titled as *Krishna Singh Vs. Union of India & Ors.*, in Civil Appeal No. 2904/2011 titled as *Union of India & Ors. Vs. Rajbi*, and in Civil Appeal No. 418/2012 titled as *Union of India Vs. Ram Avtar* and also on the order of the AFT, Principal Bench, New Delhi in OA No. 90/2014 titled *Ex AC U/T Naresh Kumar Rana Vs. UOI & Ors.* dated 25.09.2014 wherein similarly situated personnel was given relief.

8. Per contra, the learned counsel for the respondents controverted the submissions made by the learned counsel for the applicant and contended that the assessment of the RMB/RSMB is only recommendatory in nature and subject to review by the administrative authority and submitted that the authority, after examining the medical history of the applicant, has rejected the claim of disability pension and hence, the applicant is not entitled for grant of disability element of the disability pension.

9. The learned counsel for the respondents submitted that as per rules applicable at the time of discharge of the applicant i.e. as per Ministry of Defence letter No. 1 (a)/81/Pen-C dated 22 Nov 1983 as amended vide Ministry of Defence letter No. 1(1)/81/D (Pen-C) dated 21.06.1996. attributability/aggravation shall be given by the Medical Board at the time of invalidment of the applicant. The findings of the Medical Board, which are recommendatory in nature, can be reviewed by the competent authorities i.e. MA (P)/Joint Director AFMS (Pensions), at the time of consideration of initial claim/appeal for grant of disability pension. The competent authority may, for reasons to be recorded in writing, alter or modify the recommendations of the Medical Boards. Further, as per Ministry of Defence letter No. 1(2)/97/D (Pen-C) dated 07.02.2001, attributability/aggravation in respect of cases pertaining to invalidment owing to diseases shall continue to be adjudicated by MA (P) in respect of Personnel Below Officers Rank (PBOR). As such, after careful examination in consultation with the Medical Advisor (Pension) by reviewing the findings of the RMB, the claim for disability pension was rightly rejected by PCDA (P) Allahabad under the powers vested to them by the Ministry of Defence ibid policy letters. Thus the action taken by PCDA (P) Allahabad by rejecting the disability pension to the applicant is just, fair and according to prevalent rules at that time.

ANALYSIS

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

11. It is undisputed fact that applicant at the time of joining the Indian Army on 14.06.1966, was found medically and physically fit. It is also not in dispute that the disability with which the applicant is suffering from is held as aggravated due to military service by the RMB and subsequent RSMBs. It is on record that the applicant was granted disability pension from 01.09.1985 to 13.03.1987 and again from 14.03.1987 to 23.04.1997 @ 20% and when the RSMB was conducted on 05.12.1996, the disability was re-assessed @ 20% from 24.04.1997 for life, the PCDA (P) Allahabad reduced the percentage of disablement of the applicant to 11-14% and the disability pension was thus discontinued. In this connection, we may refer to the judgment of the Hon'ble Supreme Court in *Ex Sapper Mohinder Singh Vs. Union of India & Ors. [Civil Appeal No. 104 of 1993]* decided on 14.01.1993, wherein the Apex Court 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."

12. 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 disablement assessed by the RSMB held on 05.12.1996 for claiming disability pension was wrongly interfered with by the administrative authority, and is, therefore, unsustainable in law when the RSMB had already assessed the disability @ 20% w.e.f. 24.04.1997 for life. We, therefore, set aside the reduction of disability percentage at less than 20% by the administrative authority i.e. PCDA (P). Therefore, the applicant is entitled for grant of the disability element of pension.

CONCLUSION

13. In view of the aforesaid judicial pronouncements and parameters, the applicant is entitled for disability element of pension. Therefore, the OA 2006/2018 is allowed. The respondents are thus directed to grant disability element of pension to the

applicant for the disability of Lumbar Spondylosis @20% w.e.f. 24.04.1997 for life, which be rounded off to 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* (supra). The amount of arrears however are directed to commence to run from a period of three years prior to the institution of the present OA i.e. 28.11.2018 in terms of the verdict of the Hon'ble Supreme Court in *Union of India and others Vs. Tarsem Singh* (2009(1) AISLJ 371).

14. 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.

Pronounced in open Court on this 7 day of October, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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