

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

56.(Supplementary)

OA 827/2022 with MA 1078/2022

Gnr Krishna Kumar Barman (Retd) ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate  
For Respondents : Ms. Barkha Babbar, Advocate

CORAM

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

ORDER  
27.09.2024

Vide our orders of even date, we have allowed the application. Faced with the situation, learned counsel for the respondents makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007 to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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

**O.A. No. 827 of 2022**

**In the matter of :**

**Gnr Krishna Kumar Barman (Retd) ... Applicant**

**Versus**

**Union of India & Ors. ... Respondents**

**For Applicant : Shri Manoj Kr. Gupta, Advocate**

**For Respondents : Ms. Barkha Babbar, Advocate**

**CORAM :**

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

**ORDER**

Invoking the jurisdiction of this 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) To direct the respondents to grant (Invalid case) disability element of pension for life by declaring the disability as attributable to military service in terms of judgments of Hon'ble Apex Court in Sukhvinder Singh (Supra), relied upon by this AFT in catena of orders including orders placed at Annexure-A4***

*and A7; and further broad banded to 50% as per MoD Policy dated 31.01.2001; and/or*

- (b) Set aside the respondent's rejection orders and issue an order or direction of appropriate nature to grant Invalid pension for life, in terms of Hon'ble Apex Court judgments in Rakesh Pandey (supra) read with Hon'ble Apex Court order in Sukhvinder Singh (supra) declaring invalidating disability can't be less than 20%; and/or*
- (c) To pass such further order or orders, direction/directions as this Hon'ble AFT may deem fit and proper in accordance with law.*

2. The facts of this case in brief are that the applicant, having been found medically and physically fit, was enrolled in the Indian Army on 18.06.1980 and was discharged from service on 30.06.1992 being in low medical category 'BEE (Permanent)'. Before his discharge, the applicant was brought before the Release Medical Board (RMB) held on 19.02.1992, which assessed the applicant's disability 'NEUROSIS (DEPRESSIVE REACTION)' @ 20% for two years

and the same was conceded as 'aggravated by military service due to stress and strain of service'.

3. The claim of the applicant for grant of disability pension was forwarded to the PCDA (P) Allahabad and the claim was rejected by them vide letter dated 10.02.1993 as the disability was considered as NANA and it was re-assessed at less than 20%. The said decision was communicated to the applicant vide Arty Records letter dated 13.03.1993 advising him to file an appeal if not satisfied. However, no appeal was preferred by the applicant. The applicant was granted service element of disability pension vide PPO No. D/001033/93 (Army) dated 10.02.1993.

4. Thereafter, the applicant submitted an application dated 30.01.2014 through Zila Sainik Board, which was rejected vide letter dated 16.04.2014. The applicant preferred an appeal dated 18.06.2019 for revision of pension, however, no disability element of pension was granted. Again, the applicant submitted yet another petition dated 13.09.2019 through Zila Sainik Board Jalpaiguri but the same was replied to suitably informing the applicant that the claim of the applicant for grant of disability element of

pension was already rejected by PCDA (P) Allahabad vide letter dated 10.02.1993 as his disability was assessed @ 20% for two years and considered as 'aggravated by military service'. Thereafter, the applicant had served a Legal Notice dated 14.02.2022 to the OIC, Artillery Records seeking disability element of pension, the same was replied to informing the facts for not granting the disability pension. Aggrieved by the denial of disability element of pension, the applicant has filed the present OA for said relief.

5. Learned counsel for the applicant submitted that at the time of joining the Army, the applicant was declared medically and physically fully fit and was in SHAPE-1 and no note was made in his medical record to the effect that the applicant was suffering from any disease at that time and, therefore, any medical disability contracted by him during the course of his service should be treated as attributable to and aggravated by the stress and strains of service. Learned counsel further submitted that the respondents erred in considering the disability of the applicant as neither attributable to nor aggravated by service and failed to consider the fact that he had performed duties in the

stressful and difficult conditions of service during his service tenure which put tremendous mental and physical pressure on the applicant and had impacted adversely on the health of the applicant.

6. Learned counsel for the applicant placed reliance on the judgment of Hon'ble Supreme Court in Sukhwinder Singh Vs. Union of India and Ors. [2014 STPL (WEB) 468 SC], wherein it was held that whenever a member of the armed forces is invalided out of service before completion of his term, it is to be assumed that his disability was to be considered as more than 20% and the same would attract the grant of fifty percent of disability pension. Learned counsel relied upon the judgment of Hon'ble Apex Court in Ex Sapper Mohinder Singh Vs. Union of India & Ors. [CA No. 164 of 1993] which has been relied on by the AFT RB, Lucknow and submitted that when the RMB held on 19.02.1992 assessed the disability @ 20% for two years and held the same as 'aggravated by military service' and the CCDA (P) Allahabad had no authority to interfere with the opinion or the percentage of disablement of the disability already assessed by the RMB after due physical examination of the applicant.

Learned counsel relied on various judgments of various judgments of Hon'ble Supreme Court and the Tribunal. Learned counsel further relied on the judgment of Hon'ble Apex Court in Dharamvir Singh Vs. Union of India wherein it was held that a member is to be presumed in sound physical and mental condition upon entry into service if there is no record at the time of entrance and in the event of his subsequently discharged from service on medical grounds and deterioration in his health is to be presumed due to service; the onus of proof is not on the claimant but is on the employer. Learned counsel relying on various other cases pleaded that the applicant may be granted disability pension for life.

7. *Per contra*, learned counsel for the respondents submitted that after the RMB held the applicant's disability as 'aggravated by military service' and assessed @ 20% for two years, the case of the applicant was forwarded to the PCDA(P) Allahabad with regard to disability pension, however, the Medical Advisor (P) attached to the PCDA (P) re-assessed the percentage of the disablement at less than 20% and held the disability as neither attributable to nor aggravated by service

and thus the applicant was not granted disability pension. Learned counsel submits that service element of pension was duly granted to the applicant. Learned counsel further referred to Para 173 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 per the above provisions, 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 has been granted service element of pension. It is also not in dispute that the RMB held on 19.02.1992 assessed the disability of the applicant @ 20% for two years and conceded the same as 'aggravated due to stress and strain of military service'. However, the opinion of the RMB

and disability percentage were interfered with by the MA(P) attached with PCDA(P) by re-assessing the disability at less than 20% and considering the same as NANA.

10. The issue of sanctity of the opinion of RMB 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 disablement as also the opinion of the RMB for claiming disability pension was wrongly interfered with by the administrative authority, and is, therefore, unsustainable in law when the RMB had already assessed the disability @ 20% and conceded the same as 'aggravated due to stress and strain of the military service'. We, therefore, set aside the reduction of disability percentage at less than 20% and consideration of the same as NANA by the administrative authority i.e. MA (P), PCDA (P). Therefore, the applicant is entitled for grant of the disability element of pension.

12. Furthermore, it is pertinent to mention that with regard to the GoI, MoD letter No.1(2)/97/D (Pen-C) dated 07.02.2001 which was taken into consideration by 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, for grant of disability pension for life instead of a particular period, relied upon by the applicant in this case, it is pertinent to refer to Para 10 of this very policy letter stating that the provisions of the letter were only applicable to the service personnel who were in service on or after 01.01.1996. The said Para 10 reads as under :

***“10. The provision contained in this letter will be applicable to service personnel who were in service on or after 1 Jan 96. The cases which have been finalised prior to issue of this letter will not be re-opened. As regards pre 1Jan 96 disability pensioners, the assessment made by the Reassessment Medical Board held on or after the date of issue of this letter will be considered as final and for life unless the individual himself asks for a review. This 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.”***

13. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension in respect of disability 'Neurosis' @ 20% for two years from the date of discharge. Accordingly, we allow this OA and direct the respondents to grant the

disability element of pension to the applicant @ 20% for two years from the date of discharge.

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 27<sup>th</sup> day of September, 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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