

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

**O.A. No. 1284 of 2019**

**In the matter of :**

**Ex Hav Ram Prasad Ram**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant** : Ms. Eti Kumari, Advocate for Shri Ajit  
Kakkar, Advocate

**For Respondents** : Ms. Sheetal Raghuvanshi, Advocate

**CORAM :**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**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, the applicant has filed this OA and the reliefs claimed in Para 8 read as under:

- 8.1 To direct the Respondents to produce all medical records of the Applicant.**
- 8.2 To direct the Respondents to grant disability pension to the Applicant from the date of discharge.**
- 8.3 To conduct a Re-Survey Medical Board of the Applicant in order to correctly assess the disability percentage of the Applicant.**

**8.4 To direct the respondents to issue a corrigendum PPO with the necessary changes pertaining to the disability and broad banding of the disability pension.**

**8.5 To direct the respondents to pay arrears of disability pension and broad banded disability pension along with interest @ 12%.**

**8.6 To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.**

#### **BRIEF FACTS**

2. The applicant, having been found mentally and physically fit after thorough medical examination, was enrolled in the Indian Army on 03.06.1965 and was discharged from service on 30.06.1987. At the time of discharge from service, the applicant was in permanent low medical category 'EEE (P)'. The Release Medical Board (RMB) in June, 1987 assessed the applicant's disability 'ANKYLOSING SPONDYLITIS' @ 30% for two years and conceded the same as 'Aggravated by military service'. The applicant was granted service pension vide PPO No. S/016119/87 (Army).

3. The initial claim of the applicant for grant of the disability pension was forwarded to the CDA (Pensions) Allahabad. The CDA (Pensions), after adjudication of the claim, rejected the same considering the applicant's disability as neither attributable to nor aggravated by military service vide letter dated 19.08.1987, and the said decision was communicated to the applicant vide letter dated 21.09.1987 of Record Office of Respondent No. 3 with an advice that in case, the applicant is not satisfied with the decision of the respondents, he may prefer an appeal within six months from the date of issue of the letter. The first appeal was preferred by the applicant on 09.05.2019 which was rejected by the respondents stating that no action could be taken due to delay in filing the appeal and the same was returned unactioned. Aggrieved by this, the applicant has filed the present OA seeking disability element of pension.

#### **CONTENTIONS OF THE PARTIES**

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit mentally and physically and no note of disability was made in his medical record at the time of entering the service

and any medical disability contracted by him during the course of his service should be treated as being attributable and aggravated by the stress and strain of his service. The learned counsel stated that the applicant, whilst posted at Nagaland, was diagnosed with the present disability i.e. 'Ankylosing Spondylitis' in the year 1979; and even after that, the applicant has served in the Army and participated in Op Blue Star and thus he suffered a lot of stress and strain due to challenging conditions of service undertaken by the applicant during his service tenure and, therefore, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service. The learned counsel referred to 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.

5. The learned counsel for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in

**Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316]** and submitted that the respondents' action in denying the grant of the disability pension to the applicant is unjustified and unlawful because the disability, which was considered by the RMB as aggravated by military service occurred during the military service and caused due to stress and strain of the military service. The learned counsel further relied upon an order of the AFT, RB, Lucknow in the case of **Ex Lt Col DS Jasrotia Vs. Union of India & Ors. [OA 118 of 2018] decided on 15.07.2019**, wherein the disability pension was granted to the applicant therein and it was mentioned that the disability 'Akylosing Spondylitis' is an inflammatory disease and over time can cause some of the vertebrae in spine to fuse, which makes the spine less flexible and result in incorrect posture. The learned counsel for the applicant, therefore, prayed that the disability in question may be held to be attributable to and aggravated by military service and that the disability pension may be granted to the applicant.

6. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief

claimed as the assessment of the RMB was only recommendatory in nature and subject to review/revision by the competent authority. The learned counsel contended that the CDA (Pension), Allahabad, after due adjudication and in consultation with the Medical Advisor (Pension) attached thereto, considered the disability as neither attributable to nor aggravated by military service, which decision was communicated to the applicant on 21.09.1987. It was submitted on behalf of the respondents that the applicant preferred the first appeal on 09.05.2019 i.e. after a prolong lapse of 31 years and thus it was rightly returned with no action. The learned counsel submitted that since the applicant's disability does not fulfill one of the mandatory conditions in terms of Regulations 173 of the Pension Regulations for the Army, 1961 (Part-1), the disability being assessed as neither attributable to nor aggravated by military service, therefore, the applicant is not entitled to the grant of the disability pension and the OA thus deserved to be dismissed.

## ANALYSIS

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

8. It is not in dispute that in the instant case that the RMB held on 04.06.1987 assessed the disability of the applicant as 30% for 02 years and held the same as 'aggravated by military service'. However, the opinion of the RMB was interfered with by the CDA (P), Allahabad in consultation with its medical advisor who considered the same as 'neither attributable to nor aggravated by military service', without any physical medical examination of applicant resulting in denial of disability element of pension to the applicant.

9. In the instant case, the applicant was enrolled in the Indian Army on 30.06.1965 after he was examined by a duly constituted Medical Board and found absolutely fit in all respects. From the posting profile of the applicant, it is evident that the applicant during his service tenure, he was posted to the places having different and difficult environmental conditions in Assam and Ladakh and he had also participated in Op Cactus Lily (June, 1972 to May 1973),

Op Orchid, Nagaland (Oct 1977 to April, 1979) and Op Blue Star (June 1984 to May 1985). The applicant was diagnosed with Ankylosing Spondylitis in December, 1971 whilst posted at Chhamb Sector J&K area. Various Categorisation and Re-categorisation medical boards were held and finally the applicant was brought before the RMB, held on 04.06.1987 which assessed the disability of the applicant as 'Aggravated by military service' due to stress and strain of military service, which is overruled by the Administrative Authority (PCDA) by declaring the disability as neither attributable to nor aggravated by military service. However, various postings and participation of the applicant in Op Cactus Lily, Op Orchid and Op Blue Star, as mentioned hereinabove, even after having been diagnosed with the disability, makes it clear that the aggravation of the disability was due to stress and strain of service conditions. Hence, we find no infirmity in the opinion of the Release Medical Board.

10. The issue of sanctity of the opinion of a Medical Board and its overruling by a higher formation 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, 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 is 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. In view of the decision of the Hon'ble Supreme Court in *Ex Sapper Mohinder Singh (Supra)* as well as the records of the RMB, it is clear that the opinion of the RMB was wrongly

interfered with by the pension sanctioning authority. Hence, the decision of the respondents is void and unsustainable in law. Therefore, we are of the considered view that the disability of the applicant i.e. 'Ankylosing Spondylitis' was rightly opined by the RMB to be 'aggravated due to stress and strain of military service'.

12. Furthermore, with regard to the disability of the applicant, which was considered to be of permanent nature i.e. BEE (P), but assessed for a particular period i.e. for two years, it can be made out from 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 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 grant of disability element of pension in respect of disability 'Ankylosing Spondylitis' @ 30% for life from the date of discharge along with benefit of broad-banding of the same w.e.f. 01.01.1996.

14. As regards the prayer *qua* conduct of Re-survey Medical Board, there is no evidence, oral or documentary, on record to show that the applicant had ever approached the respondents asking for conduct of Re-survey Medical Board to re-assess his disability after his discharge in 1987 and it is only prayed at the time of filing the present OA. Hence, it is being prayed way beyond the applicable period of ten years as per Rule 10 of the Entitlement Rules, 1982 and thus cannot be allowed as no useful purpose will be served by conduct of RSMB after about 37 years. In any case, we have

already considered the duration of assessment of the disability of the applicant for life as brought out in Para 11 of this order, no order is necessary to be passed on this aspect now.

### **CONCLUSION**

15. In view of the above, the OA 1284 of 2019 is allowed. The respondents are directed to grant the disability element of disability pension to the applicant for the disability i.e. Ankylosing Spondylitis @ 30% for life from the date of discharge, which is directed to be rounded off to 50% for life with effect from 01.01.1996 in terms of the judgment of the Hon'ble Supreme Court in **Union of India and Ors. Vs. Ram Avtar [Civil Appeal 418 of 2012]** decided on 10<sup>th</sup> December, 2014. However, as the applicant has approached the Tribunal after considerable delay, the arrears be restricted to three years prior to the date of filing of the OA i.e. 02.08.2019.

16. 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.

17. There is no order as to costs.

Pronounced in open Court on this 22 day of August, 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

/ng/

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH,  
WEST BLOCK-8, R K PURAM, NEW DELHI

O.A. No. 1284 /2019

IN THE MATTER OF:

EX HAV RAM PRASAD RAM  
(6892641)

.....APPLICANT

VERSUS

UNION OF INDIA & OTHERS

....RESPONDENTS

MEMO OF PARTIES

EX HAV RAM PRASAD RAM

(6892641)

S/O SH. GENA RAM

R/O HOUSE No. A202, 2<sup>ND</sup> FLOOR,

ADITYA APARTMENT, UNIONE RESIDENCY,

BUDH VIHAR, BEHRAMPUR,

DISTT. GHAZIABAD (UP)- 201009

.....APPLICANT

VERSUS

1. UNION OF INDIA, THROUGH  
THE SECRETARY, MINISTRY OF DEFENCE  
DHQ PO, NEW DELHI-110011