

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

O.A. No. 141 of 2017

with

M.A. No. 131 of 2017

In the matter of :

Ex Hav Subhash Babu

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Virender Singh Kadian, 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

M.A. No. 131 of 2027 :

Vide this application, the applicant seeks condonation of delay of 5930 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 accordingly.

O.A. No. 141 of 2017 :

Invoking the jurisdiction of the 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) Direct respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant him disability element of pension along with benefits of rounding off and/or***
- (b) Direct respondents to pay the due arrears of disability pension with interest @ 12% p.a. from the date of discharge.***
- (c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost against the respondents.”***

2. The facts in brief are that the applicant, having been found medically and physically fit, was enrolled in the Indian Army on 31.05.1984 and he was discharged from service with effect from 30.04.2000 being in low medical category 'BEE (P)'. The Release Medical Board (RMB) held on

08.12.1999 assessed the applicant's disability 'PLEURAL EFFUSION (RT)' @ 20% for five years and the disability was held as 'Attributable to military service due to infection contracted in service'.

3. The applicant's claim for grant of disability pension was rejected by the PCDA (P) Allahabad vide letter dated 11.04.2001 assessing the disability at less than 20% i.e. 11-14% for five years with effect from 01.05.2000 to 07.12.2005. For assessment of the disability beyond five years, all relevant documents were forwarded to the military hospital vide letter dated 20.07.2005 and the applicant was advised to appear before the Re-survey Medical Board (RSMB). However, the applicant failed to appear before the RSMB. The respondents approached the Zila Sainik Welfare Office (ZSWO), Baghpat vide letter dated 09.12.2005 to verify the address of the applicant and to obtain unwilling certificate if the applicant did not want to appear before the RSMB. However, no response was received from the applicant or ZSWO. Thereafter, the applicant vide his petition dated 06.02.2007 intimated his willingness to appear before the RSMB and accordingly, the applicant's documents were

forwarded for conduct of RSMB. However, the applicant again did not appear before the RSMB. The applicant again expressed his willingness vide letter dated 26.12.2007 to appear before the RSMB.

4. Thereafter, a Re-Survey Medical Board (RSMB) could be conducted in May, 2008 and the disability of the applicant was re-assessed @ 1-5% for life and for intervening period from 07.12.2005 to 04.05.2008 and, therefore, the claim of the applicant for disability pension was not processed. The applicant sent legal notice dated 09.09.2021 for grant of disability pension which was rejected by the respondents vide letter dated 30.09.2021 due to disability being less than 20%. Hence, this OA.

5. Learned counsel for the applicant submitted that the PCDA (P) has no authority to reduce the percentage of the disability assessed by the RSMB on physical examination of the applicant. He relied on 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, a higher formation cannot overrule

the opinion of the medical board. He further referred to GoI, MoD policy letter dated 07.02.2001 (Annexure A-4) wherein it was provided that no periodical reviews by the RSMB is to be held in permanent nature of disability and decision once taken by the RSMB will be final and for life. Therefore, the respondents erred in reducing the percentage of the disability and discontinuing the disability pension.

6. Learned counsel for the respondents does not dispute the facts of the case. He submitted that as the applicant's disability was re-assessed by the PCDA (P) at less than 20% and referred to Para 173 of the Pension Regulations for the Army, 1961 which specifies primary condition 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. Therefore, the applicant is not entitled to get disability pension w.e.f. 14.02.1997. The applicant was communicated the decision of the PCDA (P). However, the applicant did not prefer the appeal within the stipulated time-frame but preferred the

same after about 20 years from the date of discontinuation. Hence, the OA is barred by limitation and deserves to be dismissed.

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

8. It is undisputed that the RMB held on 08.12.1999 assessed the applicant's disability 'PLEURAL EFFUSION (RT)' @ 20% for five years and the disability was held as 'Attributable to military service due to infection contracted in service'. However, the percentage of disablement of the applicant was reduced to 11-14% from 20% by the PCDA (P) Allahabad in consultation with its Medical Advisor resulting in denial of disability element of pension to the applicant.

9. 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.”

10. In view of the decision of the Hon'ble Supreme Court in *Ex Sapper Mohinder Singh (Supra)*, we are of the considered view that the percentage of the disability of the applicant as assessed by the RMB was wrongly interfered with by the administrative authority and is unsustainable in law when the RMB had originally assessed the disability @ 20%.

11. The Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Rajbir Singh [Civil Appeal Nos. 2904 of 2011]** decided on 13.02.2015, after considering the case in *Dharamvir Singh (supra)* upholding the decision of the Tribunal granting disability pension observed as under :

“..... Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces....

.....There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service.....”

12. In the RSMB held in May, 2008, the disability of the applicant was assessed as less than 20% (1-5%) for life and for intervening period from 07.12.2005 to 04.05.2008. It is not in dispute that the applicant was enrolled in the service, having been found mentally and physically fit and at the time of discharge from service on 30.04.2000, the applicant was in permanent low medical category i.e. 'BEE (P)' and the RMB, while conceding the disability of the applicant as attributable to military service, assessed the disability of the applicant @ 20% for five years. In this regard, we may refer to the policy letter dated 07.02.2001, which is applicable to the service personnel who were in service on or after 01.01.1996, whereby it was provided that with regard to re-assessment of a disability, in case of disability being of permanent in nature, the decision once arrived at will be final and for life

and no periodical review would be needed, unless the individual requests for the same.

13. The said policy letter dated 07.02.2001 was taken note of 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 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]

14. In view of the above referred judicial pronouncements and essential parameters referred to above, we hold that the applicant is entitled to the disability element of pension for the disability 'Pleural Effusion' @ 20% for life from the date of discharge from service, which is to be broad-banded to 50%

for life in view of the law laid down by the Hon'ble Supreme Court in **Union of India and Ors. Vs. Ram Avtar [Civil Appeal 418 of 2012]** decided on 10th December, 2014. However, as the applicant approached the Tribunal after a considerable delay, the arrears will be restricted to three years prior to the date of filing of this OA i.e. 24.01.2017.

15. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four 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.

16. There is no order as to costs.

Pronounced in open Court on this 17th day of September, 2024.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


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

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