

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

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OA 1960/2019

Ex Rect Mahabir Vikram Singh ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate  
For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM

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

ORDER  
29.02.2024

Vide our detailed order of even date, we have allowed the main OA No.1960/2019. Faced with this situation, learned counsel for the respondents makes an oral prayer for grant of leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the respondents and going through our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order, therefore prayer for grant of leave to appeal stands dismissed.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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

OA 1960/2019 WITH MA 2831/2019

Ex Rect Mahabir Vikram Singh ... Applicant  
Versus  
Union of India & Ors. ... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate  
For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM :

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

ORDER

MA 2831/2019

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 stands disposed of.

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3. Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application seeking grant of disability pension.

4. The applicant was enrolled in the Indian Army on 04.03.1991 and invalided out from service on 29.04.1992. The applicant submits that his disability "TUBERCULAR

PLEURAL EFFUSION (LT)” was assessed 80% for 2 years [30.04.1992 to 18.02.1994], but accepted by PCDA @ 50%, then assessed at 20% for 2 years [19.02.1994 to 29.10.1996], and accepted by PCDA @ 20%, again assessed at 20% for 10 years [30.10.1996 to 11.09.2006], but accepted by PCDA @11-14%, and lastly, assessed at 11-14% vide Re-Assessment Medical Board dated 22.08.2008.

5. It is the contention of the applicant that he was granted disability pension from the date of his invalidation till 29.10.1996, but has been discontinued since then, after PCDA reduced the assessment of the RAMB from 20% to 11-14% for the period 30.10.1996 to 11.09.2006, and then post RAMB, his disability was reduced less than 20%, but since he was invalided out, his disability has to be presumed to be 20%.

6. On a perusal of the medical records, we find that the RAMB has assessed the disability @ 20% but PCDA reduced the assessment of the disability @11-14%, which is view of settled law, unsustainable in eyes of law, with PCDA as a Pension Disbursing Authority having now power or authority to overrule the opinion of the duly constituted medical board.

7. However, on a perusal of the Re-assessment Medical Board dated 22.08.2008, we find that the disability has been

assessed @ 11-14%, which in view of the fact that the disability is not of a permanent nature, being one of the most common forms of extrapulmonary tuberculosis, presenting an acute illness with fever, cough and pleuritic chest pain, while curable with time and treatment.

8. As per the research paper published in Journal of Thoracic Disease [2016 Jul; 8(7): E486-E494], titled, "Tubercuolus Pleural Effusion", it is specified as under:

*"In many cases, TPE is a self-limited disease, and the natural history of an untreated TPE is characterized by spontaneous resolution in 4 to 16 weeks; however, about half of untreated patients would subsequently develop some form of the active disease. The goals of the treatment of TPE includes: (I) to prevent the subsequent occurrence of active tuberculosis; (II) to relieve the symptoms of TPE; and (III) to avoid the presence of a fibrothorax.*

*With appropriate treatment, the symptoms and radiological abnormalities of patients with TPE gradually abate. The typical patient becomes afebrile within two weeks, but temperature elevations may persist as long as two months. The mean time for the complete resorption of pleural fluid is approximately 6 weeks, but it can be as long as 12 weeks. There is no reason to keep the patient at bed rest and the patient needs to be isolated only if their sputum is positive for Mycobacteria tuberculosis."*

9. Noting the fact that the disability of the applicant is curable, and is not of permanent nature, and the fact that the disability has been assessed at less than 20%, we find no reason to interfere with the opinion of the duly constituted medical board dated 22.08.2008, and in view of which, we find it

pertinent to refer to the settled law in Ex Cfn Narsingh Yadav Vs UOI & Others,<sup>1</sup> wherein the Apex court had observed as under:

*21. Though, the opinion of the Medical Board is subject to judicial review, the Courts are not possessed of expertise to dispute such a report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. The invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the Report of the invaliding Medical Board.*

10. In view of the aforesaid analysis, we are of the view that the applicant is entitled for grant of disability pension, for the intervening period of 30.10.1996 to 22.08.2008 (Date of next RAMB) @20%, thereby, quashing the observation of the PCDA for the same. However, in view of the assessment made by the Reassessment Medical Board dated 22.08.2008, we are of the clear view that the disability being non-permanent in nature, applicant cannot be held eligible for grant of disability pension.

11. However, keeping in view that the applicant has been invalidated out and the mandatory requirement of minimum 10 years service for grant of invalid pension has been dispensed with vide Govt. of India, Ministry of Defence letter No. 12(06)/2019/D(Pen/Pol) dated 16.07.2020, and

subsequently, the stand taken by this Tribunal in Lt. A.K. Thapa v. UoI [OA 2240/2019] vide its judgement dated 07.07.2023 and judgement dated 11.03.2022 in Ex Rect Chhote Lal v. UoI & Ors. [OA 368/2021], wherein the requirement of the Armed Forces Personnel to be permanently incapacitated from civil re-employment as well (apart from permanent incapacitation from military service) for the grant of the Invalid pension in terms of the Govt. of India, Ministry of Defence letter no. 12(06)/2019/D(Pen/Pol) dated 16.07.2020, and the cut off date for applicability has been held to be wholly arbitrary and unconstitutional and violative of Article 14 and Article 16 of the Constitution of India and the said requirement has thus been set aside, we see no reason not to allow the prayer of the applicant with regard to the grant of invalid pension.

12. Accordingly, we partially allow this application and direct the respondents to grant the disability element of pension to the applicant @ 20% for the intervening period of 30.10.1996 to 22.08.2008 which will be rounded off to 50% in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012) decided on 10.12.2014. Furthermore, the applicant shall be held entitled to the grant of invalid pension

w.e.f. 22.08.2008, but the arrears shall be restricted to 3 years prior to the date of filing of OA [15.10.2019].

13. 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, along with all consequential benefits, failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

14. No order as to costs.

Pronounced in the open Court on the day of February, 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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OA 1960/2019