

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

OA 2475/2021 WITH MA 2587/2021  
IN (OA 611/2018 RB, JAIPUR)

Ex Hav Rajendra Singh Yadav ... Applicant  
Versus  
Union of India & Ors. ... Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate  
For Respondents : Mr. Vijendra Singh, Advocate

CORAM :

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

ORDER

MA 2587/2021

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 [(2008) 8 SCC 648), the delay in filing the OA is condoned.

2. MA stands disposed of.

OA 2475/2021

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 the Applicant has filed this OA praying to continue grant of Disability Pension to the applicant w.e.f. the date it has been

discontinued by the Respondents and grant benefit of the broadbanding of disability pension.

4. The facts germane to this case are that the applicant was enrolled in the Indian Army on 14.01.1981 and was discharged from the service on 31.08.1996. The RMB assessed the Applicant's disabilities - "Obesity @11-14% (NANA) for two years and Bronchial Asthma (aggravated by military service) @ 20% for two years" and thereafter he was given disability pension @ 20% w.e.f. 01.09.1996 to 01.08.1998 vide PCDA (Pension) Allahabad PPO No. DE/001710/97 dated 29.03.1997. The applicant was brought before RSMB dated 30.04.1998, which assessed his second disability - Bronchial Asthma @20% for 10 years.

5. It is the case of the applicant that the RSMB dated 30.04.1998, assessed his second disability - Bronchial Asthma @20% for 10 years, but the same was rejected by the PCDA which held it to be less than 20% (11-14%) for five years from 02.08.1998 to 29.04.2003, and that such rejection by the PCDA was illegal and unsustainable and therefore, applicant is entitled to disability pension @20% rounded off to 50% for life for the disability of - Bronchial Asthma as held to be aggravated by service.

6. Per contra, it is the case of the respondents that the Applicant was intimated vide Records Army Ordnance Corps letter dated 10.01.2003 that he would be brought before a Re-Survey Medical Board to assess the disability after 29.04.2003 for further grant of disability pension. However, in spite of call up notices issued by the Base Hospital, Delhi Cantt, the Applicant did not report to the Base Hospital for RSMB and the documents were returned to the Respondent's establishment unactioned.

7. Inter alia, with respect to the rejection of the claim by the PCDA, respondents have placed reliance on the Rule 27(c) of ER-82 which reads as follows :-

*"27(c) Assessment of disablement and acceptance of attributability/aggravation in cases of disabilities other than injuries are medical issues, views on such medical issues shall be given by the competent Medical Authorities as defined in rule 17(a)(i)."*

As enumerated in amended Rule 17(a) (i) of ER 82, which reads as follows:-

*"Rule 17(a) (i). Competent Medical Authorities in respect of for initial claim of commissioned officers is "Medical Advisor (Pension) Joint Director, AFMS (Pension) in the office of DG, AFMS."*

8. We have heard learned counsels for both the parties, and have perused the documents placed on record, including letters addressed to the applicant and the policy letters on the subject. The only limited questions left for our adjudication is

whether the PCDA was correct in overruling the opinion of the duly constituted RAMB and whether the applicant is entitled for grant of Disability Pension or not

9. We are of the view that the administrative decision taken by the respondents to deny disability element of pension to the applicant is against the decisions of the Hon'ble Supreme Court in Ex Sapper Mohinder Singh Vs. Union of India and another (C.A No. 164 of 1993 decided on 14.01.1993) and Dharamvir Singh Vs. Union of India and others (2013) 7 SCC 316. The IHQ (Army) has also issued a letter dated 25.04.2011, the relevant portion of which is reproduced below:

*"2 These alterations in the findings of IMB/RMB by MAP (PCDA(P)) without having physically examined the individual, do not stand to the scrutiny of law and in numerous judgments, Hon'ble Supreme Court has ruled that the medical Board which has physically examined should be given due weightage, value and credence.*

.....

*4. All Command HQs are requested to instruct all Record Offices under their command to withdraw unconditionally from such cases, notwithstanding the stage they may have reached and such file be processed for sanction."*

10. In a catena of judgments (pointedly, O.A No. 270 of 2016 of Armed Forces Tribunal, Regional Bench, Chandigarh), this Tribunal has reaffirmed with consistency that due credibility and primacy has to be given to medical

board proceedings. Whether it be the PCDA or an administrative authority, refutation of a medical opinion can only be by another more competent medical opinion. We do not find any justifiable reason on the part of the respondents in denying the disability element of pension to the applicant, especially when the Re-assessment Medical Board dated 30.04.1998 had determined the disease and assessed his disability @ 20% for 10 years.

11. While we are conscious of the fact that the Respondents have issued repeated letters to the applicant to appear before the Re-survey Medical Board, which he has not complied with. However, we cannot shy away from the fact that disability of Bronchial Asthma is a disability of permanent nature, and therefore has to be assessed for life instead of ten years in view of the judgement of Hon'ble Supreme Court in Commander Rakesh Pande Vs. Union of India & Ors. [Civil Appeal No. 5970/2019]

12. Accordingly, we allow this OA and direct the respondents to grant disability pension to the applicant @20% broadband the same to 50% from the date of discontinuation of the same i.e. 01.08.1998. Noting that in the instant case, it is not a case where attributability/aggravation has been

decided by this Tribunal, instead, the disability has been held to be aggravated by the Medical Board itself and the disability pension was granted to the applicant initially, but was discontinued later on administrative decision, we are of the view that restriction on the arrears will not be applied in the instant case.

13. No order as to costs.

14. Pending miscellaneous application, if any, stands disposed of.

Pronounced in the open Court on 18 day of October, 2024.

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

(LT GEN C.F. MOHANTY)  
MEMBER (A)

Akc