

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 580 of 2019

In the matter of :

Ex Nk Chandra Pal Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Virender Singh Kadian, Advocate

For Respondents : Shri Arvind Patel, Advocate

CORAM :

HON'BLE Ms JUSTICE ANU MALHOTRA, MEMBER (J)

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 (hereinafter referred to as 'AFT Act', the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

- (a) *Quash and set aside the impugned letter No. 3176667/DP/RA/JR dated 09.03.2019 (ought to read as 09.03.2018). And/or***
- (b) *Direct respondents to grant disability element of pension to the applicant from the***

date of discontinuation of disability element of pension with consequential benefits and arrears within interest @ 12% p.a.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

BRIEF FACTS

2. The applicant, having been found medically and physically fit, was enrolled in the Indian Army on 18.02.1983. The applicant was discharged from service on 15.03.1994 due to being in low medical category 'CEE (Permanent)'. Before discharge, the applicant was brought before the Release Medical Board (RMB) held in February, 1994, which assessed the disability of the applicant i.e. 'CONTUSION CERVICAL REGION' @ 20% for two years and considered the same as 'Attributable to military service'. Based on the same, the applicant was granted disability element of disability pension @ 20% w.e.f. 16.03.1994 to 07.02.1996. The applicant was also granted service element of disability pension from the date of discharge for life vide PPO No. D/001393/94 (Army) dated 21.09.1994.

3. On 10.11.1995, the applicant was again brought before the Re-Survey Medical Board (RSMB), which re-assessed the disability of the applicant @ 10% for life. Accordingly, the case of the applicant for grant of disability element of pension was processed and the PCDA (P) Allahabad rejected the same on the ground that the disability was assessed at less than 20%. The decision was communicated to the applicant vide Records JAT letter dated 14.05.1996. Therefore, the disability element of pension was discontinued with effect from 08.02.1996.

4. The next RSMB of the applicant was conducted on 21.02.2003 and the disability was assessed at Nil for life w.e.f. 07.02.2006. Again the PCDA (P) Allahabad rejected the case of the applicant and the decision was communicated to the applicant vide Records JAT letter dated 10.11.2003. However, the applicant did not prefer any appeal against the said decision. Thereafter, a Legal Notice dated 01.02.2019 was served on behalf of the applicant seeking grant of rounding off benefit of disability element of disability pension @ 50% for life which was rejected by the respondents vide

letter dated 09.03.2018 (should be 2019), impugned herein.

Hence, this OA.

CONTENTIONS OF THE PARTIES

5. The learned counsel for the applicant submitted that the applicant was enrolled in the Indian Army on 18.02.1983 and was discharged from service on 15.03.1994 after rendering 11 years and 27 days of service i.e. before completion of term of engagement and thus the applicant has been invalided out of service and is entitled to disability element of pension for life. The learned counsel further submitted that the respondents failed to consider that at the time of discharge/invaliding out from service, the applicant was placed in lower medical category i.e. CEE (Permanent), than the medical category at which he was recruited and the applicant should have been granted disability element of pension for life.

6. The learned counsel for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India and Ors. (2013) 7 SCC 316**. The leaned counsel further relied upon the verdict of Hon'ble Apex Court in the case of **Sukhvinder 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, 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. Therefore, the learned counsel prayed that the applicant may be granted disability element of pension for life with rounding off benefit.

7. The learned counsel for the respondents does not dispute the facts of the case, however, he submitted that as the applicant's disability was re-assessed by the first RSMB held on 10.11.1995 at less than 20% (10%), the disability element of pension was rightly discontinued. The learned counsel further submitted that the disability of the applicant was again re-assessed by the RSMB as 'Nil' in 2003 and, therefore, the applicant is not entitled to any disability element of pension. In this regard, he referred to Regulation 173 of the Pension Regulations for the Army, 1961 (Part-1) which specify 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.

8. The learned counsel further referred to Regulation 186(2) of the Pension Regulations to submit that if an individual was initially granted disability pension but whose disability is re-assessed at below 20%, he shall cease to draw disability element of pension from the date when the disability was assessed less than 20%. It was contended by the learned counsel that the applicant was communicated the rejection of his case on both the occasions, but the applicant did not exhaust the department remedy by preferring an appeal and instead, after a delay of 23 years, filed a legal notice/appeal and thus the OA filed by the applicant is barred by limitation and deserves to be summarily rejected.

ANALYSIS

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

10. In the present case, the applicant was discharged from service on 15.03.1994 due to being in low medical category

'CEE (Permanent)' for the disability 'Contusion Cervical Region' which was held as 'Attributable to military service' and assessed @20% for two years. It is not in dispute that the applicant was granted disability element of pension for two years i.e. from 16.03.1994 to 07.02.1996. Thereafter, on the basis of the finding of the first RSMB held on 10.11.1995, which re-assessed the disability @ 10% for life, the disability element of disability pension was discontinued with effect from 08.02.1996. Moreover, the next RSMB held on 21.03.2003 had assessed the disability as 'Nil'. The applicant's first RSMB, which is an Expert Body consisting of President and two Members, was conducted on 10.11.995, which, after due examination, had found that the applicant's disability was improved and effects of aggravation no longer persisted and, therefore, the percentage of disablement was assessed at 10% permanent. The recommendations of the said RSMB was duly approved by the approving authority i.e. DADH for DDMS. The applicant's disability was again reviewed while conducting the second RSMB conducted on 21.02.2003, wherein, the applicant was examined and no

disability was found and thus the assessment of degree of disablement was made as 'Nil'.

11. The Medical Board, which is an expert body, consists of specialists in the subject in the field of medical science, being President and two Members, and this Tribunal has no relevant expertise on the subject, and thus we do not consider it appropriate to interfere in the matter of assessment of the disability of the applicant. We are fortified in our view as on the point of giving weightage to medical board's opinion, it has been well settled by the Hon'ble Supreme Court in the case of **Union of India & Another Vs. Ex Rfn Ravinder Kumar [Civil Appeal No. 1837/2009]** decided on 23.12.2012 that the opinion given by the expert Medical Board should be given due weightage and credence. While pronouncing the above judgment, the Hon'ble Apex Court has stated as under :-

“Opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension brushing aside the opinion of the Medical Authorities, record the specific finding to the effect that the disability was neither attributable to nor aggravated by military service, the court should not ignore such a

finding for the reason that Medical Board is specialized authority composed of expert medical doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability due to military service and the conditions of service resulting in disablement of the individual”.

12. Again in 2019 in the case of *Ex Cfn Narsingh Yadav Vs. Union of India & Ors. [Civil Appeal No. 7672 of 2019]*, the Hon'ble Supreme Court has held that :-

“21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board.”

13. Thus, after considering all relevant aspects and the fact that the applicant was granted the disability element of disability pension till 07.02.1996 when his disability was assessed at 20% by the RMB in February, 2006, we are of the considered view that there is no error in the respondents discontinuing the disability element of pension with effect from 08.02.1996 as in the subsequent RSMBs, the disability of the applicant was re-assessed at less than 20% and

thereafter no disability was found and thus the assessment was made as Nil.

CONCLUSION

14. In view of the aforesaid consideration, there is no merit in the prayers made by the applicant and thus the OA 580 of 2019 is dismissed.

15. There is no order as to costs.

Pronounced in open Court on this 14 day of August, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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