

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

O.A. No. 837 of 2019

with

M.A. No. 1479 of 2019

In the matter of :

Ex Sep Ramesh Kumar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Shakti Chand Jaidwal, Advocate

For Respondents : Capt Sridhar J. OIC, Legal Cell

CORAM :

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

ORDER

M.A. No. 1479 of 2019 :

Vide this application, the applicant seeks condonation of 5580 days' delay 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.

O.A. No. 837 of 2019 :

The present Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007. The applicant has sought the following reliefs :

- (a) Set aside the impugned order dated 06.02.2018 passed by the respondents, rejecting applicant's appeal for grant of disability element of pension as time-barred;***
- (b) Direct the respondents to grant/ continue disability element of applicant's pension @ 20% wef 03.02.1995 as his disability was re-assessed @ 20% for ten years by the RSMB held in 1994 but was discontinued after illegal reduction of his disability below 20% by the CDA (Pension), Allahabad.***
- (c) Direct the respondents to pay disability element of pension to the applicant @ 50% for life from 01.01.1996 by giving him benefit of broad-banding of his disability from less than 20% to 50% as per Govt. policy dated 31.01.2001, as his disability has been re-***

assessed less than 20% for life as attributable to military service by the RSMB held in 2002 and similarly circumstanced armed forces personnel have already been granted disability pension by Hon'ble Apex Court as well as this Hon'ble AFT.

- (d) Direct the respondents to restore and pay to the applicant service element of his pension equivalent to fifteen years of service, which was being paid to him before implementation of OROP policy in 2014.*
- (e) Direct the respondents to pay to the applicant interest on arrears of the disability pension @ 10% per annum and/or;*
- (f) Issue such other orders/directions as may be deemed appropriate in the facts and circumstances of the case.*

2. The facts in brief are that the applicant, having been found medically and physically fit, was enrolled in the Indian Army on 20.05.1985 and he was discharged from service with effect from 30.04.1992 prematurely after 06 years of

service being in low medical category 'BEE (Permanent)'. The Release Medical Board (RMB) held in February, 1992 assessed the applicant's disability 'INCISIONAL HERNIA (OPTD)' @ 20% for two years, and the disability was held as 'attributable to military service'. Based on this, the applicant was granted disability pension consisting of service element @ Rs. 375/- per month and disability element @ 20% vide PPO No. D/005966/92 dated 19.09.1992.

3. Thereafter, on 13.11.1994, the applicant was subjected to first Re-survey Medical Board (RSMB) which re-assessed the disability of the applicant @ 20% for 10 years being 'attributable to military service'. When the applicant's case for continuation of disability element of pension as per the assessment of the RSMB was forwarded to CDA (Pensions), Allahabad, the disability assessment was reduced to 15-19% from 20% and the duration of the disability was also reduced to 5 years from 10 years as assessed by the RSMB and consequently, the disability element of pension was discontinued with effect from 03.02.1995.

4. After the period of five years, the applicant was again subjected to the second RSMB which assessed the disability

of the applicant as Nil and, therefore, the applicant was not granted any disability pension. Thereafter, in light of the Govt. Policy letter dated 07.02.2001 regarding grant of permanent disability for life, the third and the last RSMB of the applicant was held on 23.09.2002 and the disability of the applicant was finally assessed at less than 20% for life and held the disability as 'attributable to military service'. The case of the applicant was again sent to CDA (Pensions), Allahabad, which rejected the claim on the ground that the disability was assessed at less than 20% and the same was intimated to the applicant vide letter dated 22.07.2003 of Records Dogra Regiment.

5. Against the aforesaid decision of the CDA (Pensions), the applicant preferred the first appeal dated 13.01.2018 seeking grant of disability pension, which was rejected by the respondents vide impugned order dated 06.02.2018 being time-barred. Thereafter, the applicant filed the second appeal dated 23.07.2018, which, as stated by the applicant, has not been replied to by the respondents even after a reminder was sent to the respondents to process the same.

Aggrieved by the same, the applicant has filed the present OA.

6. Learned counsel for the applicant submitted that when the RSMB held on 13.11.1994 assessed the disability @ 20% for ten years, the CDA (Pension), Allahabad, had no authority to reduce the percentage so also the period of duration of disablement of the disability already assessed by the RSMB after due physical examination of the applicant. Learned counsel 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, the higher formation cannot overrule the opinion of the medical board. He further referred to GoI, MoD policy letter dated 07.02.2001, vide which it was provided that no periodical reviews by the RSMB to be held in permanent nature of disability, unless the individual himself requests for the same, and decision once taken by the medical board will be final and for life. Therefore, the respondents committed grave error in reducing the percentage and period of duration of the

disability assessed by the RSMB held on 13.11.1994 because of which the disability element of pension was discontinued.

7. On behalf of the respondents, the facts of the case have not been disputed. However, the representative of the respondents referred to Para 173 of the Pension Regulations for the Army, 1961 (Part-I), which stipulates 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" and submitted that as the applicant's disability was re-assessed by the CDA (P), Allahabad at less than 20%, the applicant is not entitled to get disability element of pension. The applicant was duly communicated about the decision of the CDA (P). Hence, it has been prayed on behalf of the respondents that the OA be dismissed.

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

9. It is not in dispute that in the instant case, the applicant was in receipt of disability element of pension till

03.02.1995. It is also not in dispute that the first RSMB held on 13.11.1994 re-assessed the disability of the applicant as 20% for 10 years and held the same as 'attributable to military service'. However, the disability percentage and also the duration of disablement was interfered with by the CDA (P), Allahabad in consultation with its medical advisor who re-assessed the same as less than 20% for 5 years, without any physical medical examination of applicant resulting in denial of disability element of pension to the applicant.

10. The issue of primacy of the opinion of a medical board and its overruling by an administrative authority 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 are 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)*, we are of the considered view that the percentage of the disability for claiming disability pension was wrongly interfered with by the administrative authority i.e. CDA (P), Allahabad, and is, therefore, unsustainable in law when the first RSMB had already assessed the disability @ 20% for 10 years.

12. Moreover, the applicant was discharged after only about 06 years of service being in low medical category with the disability of 'Incisional Hernia (Optd)'. 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 :

“15. 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.....”

13. After the RMB held in February, 1992, in the RSMB held in November, 1994, the disability of the applicant was re-assessed as 20% for 10 years, however, the CDA (Pension), Allahabad reduced the percentage and duration period of disability as less than 20% (15-19%) for 5 years while conceding the disability as ‘attributable to military service’, which has already been considered as arbitrary and unsustainable in law by us in the preceding paragraphs of this order and, therefore, the applicant is entitled for continued grant of the of the disability element of pension w.e.f. 03.02.1995.

14. Further, in the present case, the applicant was enrolled in the Indian Army on 20.05.1985 and was

discharged on 30.04.1992 prematurely on account of him being in low medical category and found fit to be released in medical category 'BEE' (Perm). The applicant was admittedly discharged on medical grounds after only about 6 years of service i.e. before the completion of his engagement, due to his being in low medical category than the medical category at which he was recruited, and thus the applicant is deemed to be invalided out of service. In this regard, the provisions of the Entitlement Rules 2008 are reproduced hereinbelow :

Entitlement Rules 2008

Invalidment from Service

(a) Invalidation from service with disablement caused by service factors is a condition precedent for grant of disability pension. However, disability element will also be admissible to personnel who retire or are discharged on completion of terms of engagement in low medical category on account of disability attributable to or aggravated by military service, provided the disability is accepted as not less than 20%.

(b) An individual who is boarded out of service on medical grounds before completion of terms of engagement shall be treated as invalided from service.

(c) PBOR and equivalent ranks in other services who are placed permanently in a medical category other than SHAPE I or equivalent and are discharged because (i) no alternative employment suitable to their low medical category can be provided, or, (ii) they are unwilling to accept alternative employment, or, (iii) they having been retained in alternative employment are discharged before the completion of their engagement, shall be deemed to have been invalided out of service."

15. From the aforesaid, it is clear that the applicant in the instant case can be deemed to be invalidated out from service and thus in view of the law laid down by the Hon'ble Supreme Court in the case of **Sukhvinder Singh Vs. Union of India and Ors. [2014 STPL (WEB) 468 SC]**, which has been followed by the Tribunal in numerous cases, the Apex Court, after taking into consideration various statutory rules and regulations, observed that a person's disability leading to invaliding out of service would attract disability pension at 50%. Relevant para of the aforesaid judgment reads as under:

"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty per cent and seems to us

to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."

16. Furthermore, with regard to the disability of the applicant assessed for a particular period, we may refer to 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]

17. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for continuation of grant of disability element of pension in respect of disability 'Incisional Hernia (Optd.)' @ 20% for life from the date of discontinuation of disability element of pension i.e. 03.02.1995. Accordingly, we allow this OA and direct the respondents to grant the disability element of pension to the applicant @ 20% for life with effect from 03.02.1995 with rounding off benefit to 50% with effect from 01.01.1996, 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. However, there being considerable delay in approaching the Tribunal, in view of the law laid down in *Tarsem Singh's case (supra)*, arrears will be restricted to three years prior to the date of filing of this OA i.e. 13.05.2019.

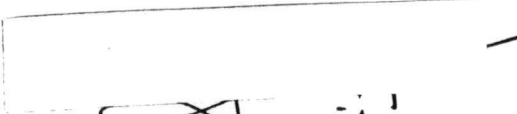
18. The respondents are thus directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within a period of three months from the date of

receipt of copy of this order and the amount of arrears shall be paid by the respondents, *failing which*, the applicant will be entitled for interest @ 6% p.a. from the date of receipt of copy of the order by the respondents.

19. In view of the above, pending MA(s), if any, stands closed. There is no order as to costs.

Pronounced in open Court on this 19th day of July, 2024.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


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

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