

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

F.

OA 860/2023

Ex Swr Ishwar Singh ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. J P Sharma, Advocate  
For Respondents : Mr. Sudhir Kumar, Advocate

CORAM

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

ORDER  
24.07.2024

Vide our orders of even date, we have allowed the application. Faced with the situation, learned counsel for the respondents makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007 to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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ORDER

The applicant has filed this application under Section 14 of the Armed Forces Tribunal Act, 2007, aggrieved over the non-granting of invalid pension and has made the following prayers:-

*(a) Direct the respondents to treat his assessment as @20% for life wef 17.07.2015 as his disability viz "NEUROLOGICAL AMYOTROPHY C-5 LEFT (352)" has already accepted as aggravated by military service by Invalid Medical Board and now Re-assessment Medical Board has also assessed his assessment as 20% for life and law has already settled by Hon'ble Supreme Court in Case No CA- 5605/2010 titled Sukhvinder Singh Vs UOI (2014 STPL(web) 468 SC) decided on 25.6.2014. And/OR*

*(b) Direct to the Respondents to grant Disability Element of Pension @20% wef 17.07.2015 and further benefit of Rounding off @20% to @50% wef 17.07.2015 for life to the applicant as per Para 7.2 of policy issued by Gol, MoD vide letter dated 31.01.2001 and settled the Hon'ble Supreme Court in Civil Appeal No 418/2012 titled UOI & Ors Vs. Ram Avtar vide judgement dated 10.12.2014 alongwith interest @10% p.a. till final payment is made.*

✓

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

2. The applicant was enrolled in the President's bodyguard on 20.06.1968 and he was diagnosed with "Neuralgic Amyotrophy" C-5 LEFT (352)' which was assessed to be aggravated due to stress and strain of Military Service. The Invaliding Medical Board of the applicant was carried out at Base Hospital Delhi Cantt on 23.10.1973 and the disability of the individual was assessed as less than @ 20% (15-19%) for two years and the applicant was thereafter invalidated out from service by Medical Board with effect from 18.11.1973 under Rule 13 (3) III (iii) of Army Rule 1954, being medically unfit for further service before completion of terms of engagement. The PCDA rejected the claim of the applicant and the applicant thereafter approached this Tribunal vide OA no 1259 of 2018 which was decided on 03.02.2021 by following order-

*(i) Annexure A1 order dated 02.01.2018 is quashed.*

*(ii) The disability of the applicant "NEURALGIC AMYOTROPHY C-5 LEFT (352)" @15-19% for two years is to be deemed to be @20% for two years in the light of the decision of the Hon'ble Supreme Court in Sukhwinder Singh (Supra);*

*(iii) The applicant is entitled to Disability Pension for two years with effect from the date of his invalidation i.e. 18.11.1973;*

*(iv) Since the applicant has approached the Tribunal after a huge delay, his financial benefits will be restricted to three years prior to the date of filing this OA i.e. 17.07.2018;*

*(v) The respondents are directed to grant Service Element of Disability Pension to the applicant for life, restricting the arrears for a period of three years prior to the date of filing of the present OA i.e. 17.07.2018;*

*(vi) The applicant is not entitled to any arrears of Disability Element of Disability Pension for the two years period with effect from 1973 i.e. the period for which his Medical Board was valid. His future entitlement will depend on the outcome of a Re-Survey Medical Board (RSMB), which is to be conducted by the respondents within three months from the date of receipt of a copy of this order;*

*(vii) The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order; and*

*(viii) In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @6% on the amount accrued from due date till the date of actual payment.*

3. In pursuance to the aforementioned order the applicant's case was processed for Re-assessment Medical Board (RAMB) which was carried out on 18.10.2021 which assessed the disability as @20% i.e. 15% due to service conditions and @5% attributed to non- service factors/ conditions.

4. It is the case of the applicant that the RAMB has wrongly reduced his @5% disability as he was invalided out from service due to disability "NEURALGIC AMYOTROPHY C- 5 LEFT (352)" and the ibid disability was accepted as 'Aggravated by military service' due to

stress and strain of military service. Hence, the ibid disability should be treated as 20% for life instead of 15%.

5. Reliance was placed by the applicant on the verdict of Hon'ble Supreme Court in Case No CA-5605/2010 titled as Sukhvinder Singh Vs. UOI (2014 STPL (web) 468 SC) decided on 25.06.2014, which held that "*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 Force; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence*".

6. Per contra, the learned counsel for the respondent contends that the competent authority for deciding attributability/aggravation of a disease in respect of Personnel Below Officer Rank (PBOR) is Officer-in- Charge Records, on the basis of RMB/IMB as approved by the higher medical authority, which would be treated as final and for life. It was further contended that as per Para 2 of Govt. of India Ministry of Defence Department of Ex-Servicemen Welfare letter No.17(01)/2017/D(Pen/Policy) dated 23.01.2018 the accepted percentage of disability should be more than 20% for grant of disability pension. Since, the case of the applicant does not fall into

the accepted percentage the applicant thereby is not entitled for the grant of pension. Reliance was further placed on the verdict of the Hon'ble Supreme Court of India in case of Secretary, Ministry of Defence and other Vs. AV Damodaran (Dead) through LRS and Ors [(2009) 9 SCC 140] and in case of Controller of Defence Account and other Vs. Balachandran Nair [(2005) 13 SCC 128], in which it was held that, "the Medical Board being an expert body and its opinion is entitled to be given due weightage, value and credence" and therefore, the applicant therefore, is not entitled for the benefits.

7. We have heard the arguments of the Learned Counsel for the Applicant as well as the Respondents and also carefully perused the material placed on record. The only question left for adjudication is whether the assessment of disability of applicant as @15% due to service factors and @5% due to non- service factors is correct or not ?

8. On a perusal of the medical documents on record, we find that the IMB held on 23.10.1973 assessed the disability less than @20% (15-19%) for two years, the RAMB now held on 27.09.2021 consequent to our orders has once again assessed the disability of NEURALGIC AMYOTROPHY C-5 LEFT (352) @20% for life and aggravated by service. The assessments of the RAMB at Para 6(a) and 6(b) are reproduced as under -

6. (a) Assessment of illness(es) /disability(s) for which RAMB/RMB has been sanctioned (in words and figures).

<i>Disabilities</i>	<i>Previous Assessment (Both in words and figures)</i>	<i>Present Assessment (Both in words and figures)</i>	<i>Assessment for disablement due to non-service factors (As per Para 4 c)</i>	<i>Present Assessment (Column iii minus iv)</i>	<i>Duration of assessment</i>	<i>Composite Net Assessment Referable to service with duration (both in words and figures)</i>
<i>(i)</i>	<i>(ii)</i>	<i>(iii)</i>	<i>(iv)</i>	<i>(v)</i>	<i>(vi)</i>	<i>(vii)</i>
<i>(a) NEURALGIC AMYOTROPHY</i>	<i>14-19%</i>	<i>20%</i>	<i>05%</i>	<i>15%</i>	<i>For life</i>	<i>15% for life</i>

6. (b) Assessment of illness(es) /disablement(s) during intervening period (in words and figures)

<i>Disability</i>	<i>Assessment (Both in words and figures)</i>	<i>Duration of Assessment</i>		<i>Composite Net assessment referable to service with duration (if application) (Both in words and figures)</i>
		<i>Date</i>		
		<i>From</i>	<i>To</i>	
<i>(a) NEURALGIC AMYOTROPHY (G54.5)</i>	<i>15%</i>	<i>17 July 2015</i>	<i>17 Oct 2021</i>	<i>15% (Fifteen percent) For intervening period (Arrears restricted upto three years – date of filling of OA (i.e 17 July 2018))</i>

9. An analysis of aforesaid RAMB makes it clear that the assessment of disability was held to be 15% due to service factors,

and 5% due to non-service factors, with composite being assessed at 20%, meaning thereby that the disability continues to exist even after expiry of 50 years from the date of invalidment. Para 6(a) of the aforesaid RAMB, shows that while the previous assessment of the applicant was assessed @14-19% which means less than 20%, the same has been assessed @ 15% in view of the fact that in cases where the aforesaid disability can be assessed below 20%, it has to be assessed in round figures like 5%, 10% or 15%, unlike earlier cases where the disability has been assessed in approximate figures as 11-14% or 15-19%.

10. With previous assessment being 14-19%, the fact that the applicant was "*Invalidated Out*" from service means that the disability has to be mandatorily construed to be @20%, in view of the ratio laid down by Hon'ble Supreme Court in *Sukhvinder Singh Vs. Union Of India & Ors* [(2013) 7 SCC 316]. Nevertheless, the present assessment being 15% specifies that the disability has remained static over the years, and the same has been asserted by the Re-assessment Medical Board vide its opinion in Part IV to the effect:

*"The disease had remained static throughout years. It has not increased neither the functional deficit"*

11. At this moment, even if the disability of the applicant has to be assessed @15% due to service factors, the fact that the applicant was

invalidated out from service remains unchanged and his service was cut short by the disability, which was held to be aggravated by the military service, and thus, the assessment of disability of the applicant has to be construed @20% in view of his invalidation as emphasized by the ratio laid down by the Apex Court in Sukhvinder Singh (supra), with specific reliance on Para 9 thereof to the effect:-

*“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 authorising 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 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.”*

(emphasis supplied)

12. Therefore, in light of the settled law laid down by the Apex Court in Sukhvinder Singh (supra) and the observation made above, we are of the opinion that the applicant is entitled to grant of disability element of pension @20% for life and rounded off to 50% in view of judgement of Hon'ble Apex Court in UoI Vs. Ram Avtar

(supra) from the date of discharge. However, as the applicant has approached the Tribunal after a considerable delay, in view of the law laid down in Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371], arrears of disability pension will be restricted to commence to run from three years prior to the date of filing of O.A. Respondents are further directed to give effect to the order within three months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 6% per annum till the date of actual payment.

13. No order as to costs.

14. Pending miscellaneous application, if any, stands closed.

Pronounced in the open Court on 24<sup>th</sup> day of July, 2024.

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[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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