

COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Suppl

2

OA 1692/2019 with MA 2621/2019

Capt J K Verma (Retd.)

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate

For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
13.07.2023

Vide our detailed order of even date we have allowed the OA 1692/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court

After hearing learned counsel for the respondents and on perusal of 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 to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

- (a) *Quash and set aside the impugned letter No. 7(1518)/99/D(Pen-A & AC) dated 31.10.2000. And/or***
- (b) *Direct respondents to grant disability pension to the applicant wef date it discontinued i.e 23.02.1998. And/or***
- (c) *Direct respondents to grant service element of disability pension wef date it discontinued i.e 23.02.1998. And/or.***

- (d) *Direct respondents to grant disability element @50% with benefits of rounding off/ broad banding wef date it discontinued i.e. 23.02.1998. And/or*
- (e) *Direct respondent to conduct Re Survey Medical Board to assess present disablement of the applicant. And/or*
- (f) *Direct respondents to pay the due arrears with interest @ 12% p.a. with all the consequential benefits. And/or*
- (g) *Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.*

BRIEF FACTS

2. The applicant was enrolled in the Indian Air Force on 13.06.1967 and served in the IAF from 13.06.1967 to 06.07.1973 for a period of 6 years and 10 months and thereafter was commissioned in the Indian Army as a short Service Commissioned Officer on 12.05.1974. The applicant was invalided out from the Army with effect from 12.05.1979 in low medical category **S1H1A1P5E1** on account of the disability of '**Pulmonary Tuberculosis**'. The IMB for the applicant had conceded the disability to be attributable to

service @ 100% for a period of one year w.e.f. 13.05.1979 to 09.05.1980.

3. The applicant was consequently granted the disability pension consisting of service element and disability element of pension from 10.05.1980 to 05.06.1983 vide letter dated 26.07.1983. Thereafter the disability pension was further extended vide PPO dated 16.07.1993 and the disability element was assessed @20% which was extended till 22.02.1998. Thereafter, the disability pension of the applicant was discontinued with effect from 02.02.1998 as the disablement was assessed less than 20% (11-14%) for 05 years by CDA(P), Allahabad vide its letter GI/M/44032 dated 21.05.1998.

4. The applicant thereafter made a representation dated 18.06.2015 for grant of the disability pension or to convene the Re Survey Medical Board but has not received any reply from the respondents towards such a representation. Aggrieved by getting no response from the respondents, the applicant has filed the instant OA. In the interest of justice,

in terms of Section 21(1) of the AFT Act, 2007, we take up the same for consideration.

CONTENTIONS OF PARTIES

5. The learned counsel for the applicant submitted that after invalidment from the service, the applicant was in receipt of disability pension with effect from 10.05.1980 to 22.02.1998. The learned counsel for the applicant submitted that the applicant had undergone a number of RSMB with effect from 1983 to 1998 and submitted the details of the conduct of the RSMB, which reads as under:-

SS 27055 N Captain J K Verma (Retd)

Sl No.	Medical Board	Date Of Board	ASSESSMENT OF DISABILITY (AFMS-17)			ALTERED Or ASSESED/ACCEPTED By MA(P),CDA (P),ALLAHABAD/MoD			AUTHORITY
			Para 6 Variation in Disability (ies) Since Previous board	Para 8 (a)		11-14% No Pension	10 years	Without conducting fresh Medical Examination	
				Net Assessment (6)	Duration of assessment (7)				
1.	Appellate Authority MoD	01.02.1999			IMPUNGED Letter GOI MoD No. 7(1518)/O/99/D(P en A&AC) dt 31.10.2000	
2.	RSMB	02.02.1998	No Change	20%	Permanent	11-14% No Pension	5 years	Without conducting fresh Medical Examination	CDA(P),letter GI/M/44052 dt 21.5.98
3.	RSMB	23.02.1993	Unchanged	20%	Permanent Wef 10.5.91	20%	5 years	Without conducting fresh Medical Examination	M/Dis/85/93 dt 16.7.93

1.	RSMH	10.05.1989	Unchanged	50%	2 years	20%	2 years	Without conducting fresh Medical Examination	M/Dis/113/89 dt 3.8.89
3.	RSMH	28.02.1987	Improved	50%	2 years	50%	2 years		PPO No. M/FPC /603/88 & PPO M/Corr/1428/88
6.	RSMH	14.05.1985	Static	60%	2 years	50%	2 years	Without conducting fresh Medical Examination	
7.	RSMH	06.06.1983	Improved	60% 100%	2 years	60% 100%	2 years 3 years		PPO M/2175/83 dt 27.7.83
8.	Invaliding	10.05.1979	Invalided Out	100%	1 year	100%	1 Year		CDA (P) No. GI/M/44052 Dated 23.4.83

6. The learned counsel for the applicant submitted that the RSMB conducted on 02.02.1998 had assessed the disability of the applicant @ 20% for life. However, the said disability was reduced to 11-14% for 5 years without conducting fresh medical examination by CDA Allahabad which is an administrative authority vide its letter no. GI/M/44052 dated 21.05.1998 and the disability pension which the applicant was in receipt of was discontinued. The appellate authority had conducted another board on 01.02.1999 wherein PCDA, Allahabad again assessed the disability of the applicant as 11-14% for 10 years. The appellate Authority of the MoD without conducting a fresh medical examination had assessed the

disability of the applicant @11-14% vide the impugned letter no.GOI, MoD No. 7(1518)/O/99/D(Pen A &AC) dated 31.10.2000.

7. The learned counsel for the applicant submitted that unilateral reduction of the percentage of the disability by an administrative authority like CDA without conducting any medical board is unjust and illegal.

8. Per contra, the learned counsel for the respondents submitted that as per the Invaliding Medical Board (AFMSF-16 dated 10 May 1979), the disability of the applicant was assessed as under :-

Ser No	Disability	ATTR/AGGR/NANA	% of disabilment	Probable duration of this degree of disablement	Composite Assessment (all disabilities)
(a)	PULMONARY TUBERCULOSIS	ATTR	100%	Review of One year	100%

The learned counsel for the respondents submit that the applicant was granted disability pension @ 100% for 4 years from 13 May 1979 to 05 Jun 1983 and @ 60% for 02 years from 06 Jun 1983 to 05 Jun 1985 vide PPO M/2175/83

dated 27.07.1983. and CDA (P) Allahabad letter No G1/M/44052 dated 23 Apr 1983. Thereafter, Re-survey Medical Board was conducted on 14.05.1985 which again assessed the disability of the applicant @ 60% for 02 years and CDA(P) Allahabad granted pension @ 50% for 02 years. Another RSMB was conducted on 28.02.1987, which assessed the degree of disablement @ 50% for 02 years but CDA (P) granted disability pension @ 20% for 02 years vide PPO no M/FPC/603/88 and PPO M/Coord/1428/88.

9. The learned counsel stated that another RSMB was conducted on 10.05.89 which assessed the disability @ 50% for 02 years but the CDA (P) Allahabad granted disability @ 20% for 02 years and the RSMB conducted on 23.02.1993 which assessed the disability of the applicant @ 20 for life was changed by the CDA (P) Allahabad and the applicant was granted disability pension @ 20% for 05 years vide its letter M/D15/85/93 dated 16.07.1993.

10. The learned counsel for the respondents submitted that another RSMB was conducted on 02.02.1998, wherein MA(P), CDA(P) Allahabad assessed the disability of the applicant as

11 to 14% for 05 years and the disability pension of the applicant was therefore discontinued.

11. The learned counsel for the respondents further submitted that the officer thereafter preferred an appeal against discontinuation of the disability pension on 26 Apr 2000. which was adjudicated and rejected by the Competent Authority vide Government of India, Ministry of Defence letter No. 7(1518)0/99/D(Pen-A & AC) dated 31 Oct 2000 stating that "Disability pension was sanctioned to the applicant up to 22.09.1998 and on perusal of the service/medical documents, the Appellate Medical Authority has found that the applicant's disability has improved and has assessed his disablement at less than 20% (11-14%) for 10 years and since the disablement has been assessed at less than 20%, the applicant is not entitled for disability pension with effect from 23.02.1998"

ANALYSIS

12. It is an undisputed fact that the applicant had joined the Army on 06.07.1973 having been adjudged to be fully fit

following a rigorous medical examination. There is also no dispute with regard to the fact that the downgrading of the medical category of the applicant to **S1H1A1P5E1** was in view of the invaliding disabilities in question and that the applicant was invalided from service in a low medical category. Prior thereto, the Release Medical Board assessed the disability of the applicant @ 100% for one year. The applicant thereafter had undergone a number of RSMBs and the disability pension was finally stopped by the PCDA (P) Allahabad in 1998 whereas the RSMB conducted in the same year had assessed the disability to be 20% for life (Permanent) by the medical board.

13. 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 v. Union of India and another** (C.A No. 164 of 1993 decided on 14.01.1993) and **Dharamvir Singh v. Union of India and others** (2013) 7 SCC 316.

14. In a catena of judgments 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 Release Medical Board had determined the invaliding disease and assessed his disability @ 20% permanently vide RMB conducted on 02.02.1998.

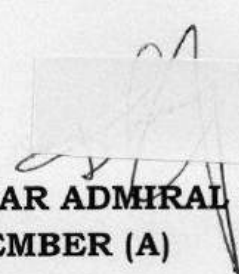
15. Further, in view of the judgment of the Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** in C.A No. 418 of 2012 dated 10.12.2014, the applicant is entitled to get the disability element of pension broad banded to 50%, based on the Government notification dated 31.01.2001.


16. The O.A 1692 of 2019 is therefore allowed setting aside the impugned order dated 31.10.2000 and directing the respondents to grant disability element of pension to the applicant @ 20% and broad band the same to 50% for life with

effect from the date of his discharge 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.

17. The respondents are thus directed to calculate, sanction and issue the necessary 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 to interest @6% p.a. on the arrears from the date of receipt of copy of the order by the respondents.

Pronounced in the open Court on this day of 13th July, 2023.


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)


[JUSTICE ANU MALHOTRA]
MEMBER (J)

Pooja

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

RA 63/2023 WITH MA 3769/2024 IN OA 1692/2019

Capt. JK Verma (Retd.)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate

For Respondents : Ms. Jyotsna Kaushik, Sr CGPC

CORAM:

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

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Vide the instant RA filed by the Applicant under rule 18 of AFT (Procedure) Rules, 2008, the applicant seeks modification of the order passed by this Tribunal on 13.07.2023 in OA No. 1692/2019 with MA 2621/2019.

In OA 1692/2019, the applicant had prayed for the following:

- (a) Quash and set aside the impugned letter No 7(1518)/99/D(Pen-A&AC) dated 31.10.2000. And/or.*
- (b) Direct respondents to grant disability pension to the applicant w.e.f. date it discontinued i.e., 23.02.1998. And/or*
- (c) Direct respondents to grant service element of disability pension w.e.f. date it discontinued i.e., 23.02.1998. And/or*

(d) Direct respondents to grant disability element @50% with the benefits of rounding off/ broad banding w.e.f. date it discontinued i.e., 23.02.1998. And/or

(e) Direct respondents to conduct Re Survey Medical Board to asses present disablement of the applicant. And/or

(f) Direct respondents to pay the due arrears with interest @12% p.a., with all the consequential benefits. And/or

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

2. The present application has been filed seeking modification of the order dated 13.07.2023, by which this Tribunal had allowed the disability of **Pulmonary Tuberculosis** and awarded the disability element of the pension to the applicant @ 20% and broad banded the same to 50% for life w.e.f. date of discharge and the respondents were directed to calculate, sanction and the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order, failing which the respondent was held entitled to interest @ 6% per annum from the date of receipt of the copy of the same order. The said order at Paras 15, 16 & 17 reads as under:

"15. Further, in view of the judgment of the Hon'ble Supreme Court in Union of India and others v. Ram Avtar in C.A No. 418 of 2012 dated 10.12.2014, the applicant is entitled to get the disability element of pension broad banded to 50%, based on the Government notification dated 31.01.2001.

16. The O.A 1692 of 2019 is therefore allowed setting aside the impugned order dated 31.10.2000 and directing the respondents to grant disability element of pension to the applicant @ 20% and broad band the same to 50% for life with effect from the date of his discharge 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.

17. The respondents are thus directed to calculate, sanction and issue the necessary 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 to interest @6% p.a. on the arrears from the date of receipt of copy of the order by the respondents."

3. Now, in the instant RA, it is the case of the applicant that the applicant was invalided out from the service and was granted disability pension (both service element and disability element) from the date of invalidment from service i.e., 12.05.1979 and thereafter, the disability pension was discontinued w.e.f. 23.02.1998 on account of his disability being assessed less than 20% (11-14%) for 10 years, however, in terms of Para 16 of order dated 13.07.2023, this Tribunal had allowed the disability element of the pension to the applicant @ 20% and broad banded to 50% for life w.e.f. date of discharge.

4. As the applicant was already in receipt of the service element of the pension in terms of GOI-MoD letter no. 1(2)/97/D(Pen-C) dated 31.01.2001

since he was invalided out from service, it is apparent that there has been an inadvertent error in Para 16 of the order dated 13.07.2023 in OA 1692/2019 while allowing the application whereby the applicant has been granted the disability element of the pension only.

5. The instant application is thus allowed to the extent that the words "*disability element of pension*" in Para 16 of the order dated in 13.07.2023 in OA 1692/2019 are directed to be read as "*disability pension consisting the service element and disability element.*"

6. Para 16 of the order dated 13.07.2023 in OA 1692/2019 as modified shall read to the effect as follows: -

*"The O.A. 1692 of 2019 is therefore allowed setting aside the impugned order dated 31.10.2000 and directing the respondents to grant disability pension consisting the service element and disability element to the applicant @ 20% and broad band the same to 50% for life with effect from the date of his discharge in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India vs. Ram Avatar** (Civil Appeal No. 418/2012), decided on 10.12.2014."*

7. No order as to costs.

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

[REAR ADMIRAL ~~DHIREN VIG~~
MEMBER (A)]

[JUSTICE ANU MALHOTRA]
MEMBER (J)]