

COURT NO. 1,
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
OA 1827/2022 WIHT MA 2404/2022

Nb Sub Mahendra Pal Sharma (Retd.) ... Applicant
Versus
Union of India & Ors. ... Respondents
For Applicant : Mr. Ravi Kumar, Advocate
For Respondents : Mr. Prabodh Kumar, Sr. CGSC

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

ORDER

MA 2404/2022

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 1827/2022

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 the applicant has filed this OA with following prayers:

(a) *To direct the respondents to place on record the original IMB/RMB proceedings and Resurvey medical boards and other associated medical documents.*

(b) To direct the respondents to grant the disability element of pension for lifelong, along with all consequential benefits and with the arrears & interest @12% p.a. wef the date of discontinuation, viz 18 Jul 1996.

(c) To direct the respondents to grant the disability element of pension @30% broadbanded to 50% for life in view of the Hon'ble Apex Court judgement in Ram Avtar (supra) and Dharamvir Singh (supra) by treating the disabilities as attributable and aggravated to Military service.

4. The facts germane to this case are that the applicant was enrolled in the Indian Army on 29.10.1963 and was discharged from the service on 31.12.1984, after no alternative appointment in conformity with his low medical category could be found. The RMB assessed the Applicant's disabilities - *"Bronchial Asthma (aggravated by military service) @ 30% for two years"* and thereafter he was given disability pension @ 30% w.e.f. 01.01.1985 to 25.09.1986 vide PCDA (Pension) Allahabad PPO No. D/1239/85 dated 25.09.1986. The applicant was brought before RSMB at Base Hospital, Delhi Cantt dated 19.07.1986, which assessed his disability - Bronchial Asthma @30% permanent. However, the same was limited to 10 years by the PCDA(P) and the applicant was granted disability pension wef 26.09.1986

to 18.07.1996 vide their PPO No D/RA/15452/86 dated 21.11.1986.

5. The applicant underwent his second RSMB at Base Hospital, Delhi Cantt on 22.04.1996 for further assessment of disability on 22.04.1996, w.e.f from 19.07.1996. The Release Medical Board assessed the disability @30% for five years. However, the PCDA (P) Allahabad vide their letter No. G-3/RA/7/96/8207/11 dated 25.09.1996 held the disability of the petitioner @11-14% for ten years w.e.f. 19.07.1996 to 21.04.2006. The decision of the PCDA(P) Allahabad was communicated to the petitioner vide Signal Records letter No P/JC-12566/RSMB/NER dated 17.10.1996.

6. Third RSMB of the applicant was carried out at Base Hospital, Delhi Cantt on 24.09.2003 and the medical board assessed his disability of the petitioner as static and @11-14% for life. The applicant was informed vide Signals Records letter No P/JC-12560/RSMB/NER dated 19.11.2003 that his disability has been re-assessed @11-14% for life by Re-survey Medical Board.

7. Later the applicant submitted a petition dated 28.12.2021 seeking disability pension, wherein the

applicant was informed vide Signals Records letter No P/JC-125601/DP-6/NER dated 05.11.2021 that he has already been replied vide Signals Records letter No P/JC-125601/DP-6/NER dated 01.08.2017. Aggrieved by the aforesaid rejection, the applicant has filed this OA.

8. It is the case of the applicant that the first RSMB dated 19.07.1986 assessed his disability - Bronchial Asthma @30% for life, but the same was rejected by the PCDA which held it to be for 10 years. Similarly, second RSMB 22.04.1996 assessed his disability @30% for 5 years but the PCDA overruled it and held the disability less than 20% (11-14%) for ten years, 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.

9. It is further submitted by the applicant that the third RSMB erroneously reduced the assessment from 30% to 11-14%, without any sound reasoning, whereas the opinion of the Graded Specialist in the RSMB records that, *"the condition of the patient remains unchanged last review."* Furthermore, with respect to the question of worsening due to

natural progress of the disabilities, the answer was recorded as 'static'.

10. Per contra, it is the case of the respondents that the PCDA has adjudicated over the claim in consultation with the Medical Advisor (Pensions) attached to their office, and thus, has assessed the disability of the applicant in second RSMB @11-14% and the disability pension was denied to him. Furthermore, in subsequent RSMB, the Medical Board has itself assessed the disability @11-14%.

11. 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 DGAfms."

12. 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:-

(i) 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 as far as assessment by Second RSMB ?

(ii) Whether the third RSMB was correct in reducing the assessment of the disability when it was recorded by the Graded Specialist that the condition was static?

Issue (i): First & Second RSMB

13. With respect to the first issue, 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."

14. In a catena of judgments (pointedly, OA 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. We do not find any justifiable reason on the part of the respondents in denying the disability element of pension to the applicant for the period 19 July 1996 to 21 April 2006.

Issue (ii): Third RSMB

15. Proceeding to examine the third RSMB dated 24.09.2003, we observe that the RSMB has assessed the disability of the applicant @11-14%, thereby, reducing it from the earlier assessment of 30% by the Second RSMB. Examining the opinion of the Graded Specialist Maj Ranjit K Nair, we find it pertinent to refer to the aforesaid opinion herein:

The condition of patient remains unchanged since last review.

16. On a perusal of the assessment table, enshrined in Para 8 of Part II, we find that the condition has been mentioned as 'Static'. Similarly, we find it relevant to refer to

Para 6(a) of the Part II of the RSMB, which is reproduced as under:

(a) Has the condition of pensionable disability (ies) since the last board improved or deteriorated ?

✓ X X

STATIC/IMPROVED/DETERIORATED

17. While we are conscious of the fact that the opinion of the Medical Board and medical specialists is to be regarded in high esteem, we are unable to stand in consonance with the manner in which the assessment has been done. In addition, we are at a loss to understand the actions of the approving authorities who have endorsed the RSMB without adequate scrutiny of the assessment of the Medical Boards.

18. Keeping in view that the opinion of the third RSMB in holding that the disability of applicant was reduced without any cogent and sound reason, wherein the rest of the medical records specify that the condition has remained static and has not improved, thereby, inadvertently overruling the earlier opinion of the Re-assessment Medical Board, we are fortified and find it essential to refer the observations of the Hon'ble Supreme Court in Veer Pal Singh Vs. Secretary, Ministry of Defence [(2013) 8 SCC 83], wherein the Apex Court held that the opinion of the experts deserves respect and not

worship. The relevant observations of the Apex Court in paragraph 11 of the judgement is reproduced as follows:

“11. Although, the Courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. What needs to be emphasized is that the opinion of the experts deserves respect and not worship and the Courts and other judicial / quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release / discharge from the Army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable.”

19. Thus, we are of the considered opinion that the assessment of the third RSMB with respect to the disability of the applicant is unsustainable in eyes of law, and thus, we find ourselves constrained to interfere in the opinion of the medical board and hold that the disability has to be assessed @30% in line with the assessment of the previous RSMBs with the disability constantly being static without any improvement.

20. Accordingly, we allow this OA and direct the respondents to grant disability pension to the applicant @30% broadband the same to 50% from the date of discontinuation of the same i.e. 19.07.1996. However, the arrears will be restricted to three years from the date of filing of this OA on 17.08.2022 in view of the law laid down in the

case of Union of India and others Vs. Tarsem Singh [2008
(8)SCC 649].

21. No order as to costs.

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

Pronounced in the open Court on 13th day of January 2025.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

/Akc/