

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

OA 1377/2018

Ex Maj PK Dash ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. Jasman Singh Sethi, Advocate
For Respondents : Mr. Arvind Kumar, Advocate

CORAM :

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of Armed Forces Tribunal 2007, the applicant, praying for following reliefs:

(a) Quash and set aside the orders dated 26/07/1994, 16/06/1997 and 08/12/2017 passed by respondents, whereby the claim of the applicant for disability pension has been rejected.

(b) direct the respondents to release/grant 100% disability pension to the applicant's w.e.f. date of his discharge from service till the amount paid, with all consequential benefits, along with 12% interest.

(c) direct the Respondents to release/grant service pension of service for 20 years 4 months, as SSC Officer, as per the pension regulations.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.

2. The applicant has served in the Army Medical Corps of the Indian Army in two spells. In the first spell, he served from 28.08.1972 to 24.10.1982 and in the second spell, he served from 29.12.1983 to 05.03.1994. The applicant in his 1st spell of service was released from service in SHAPE-1 while in 2nd spell of service, he was released from service in low medical category S1H1A1P3E1 for disability IHD (Angina Pectoris). The respondents had denied his disability pension being a constitutional disease. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

Submissions on behalf of the Applicant

3. Elaborating the factual context, it is submitted by the applicant that while the applicant was on duty in an active field area where in he was participating in a test exercise, the applicant fell sick due to stress and strain conditions in his continued service on 29.04.1993 at Mahajan Field firing range and was admitted in a hospital due to which he was placed in Medical Category S1H1A1P3E1 for IHD (Angina Pectoris) by the Medical Board held on 17.05.1993.

4. It is argued by the applicant that he was again admitted in the Military Hospital on 01.12.1993, wherein his RMB was held and he was placed in a S1H1A1P3E1 category with 100% disability aggravated by service, subject to

the approval of higher authority, for medical review on 26.06.2017.

5. It is further submitted on behalf of the applicant that his case is that of invalidation from service on 06.03.1994 on account of disability IHD (Angina Pectoris) in S1H1A1P3E1 category subsequent to which the respondents forwarded his case for disability pension to Chief C.D.A. (P) Allahabad on 03.12.1997. The Chief CDA(P) Allahabad vide their order dated 28.07.1994 rejected his claim for disability pension. The applicant, aggrieved by the order of Chief CDA(P) Allahabad, filed an appeal dated 01.09.1994 which was subsequently rejected by the Respondents No. 1 vide order dated 16.06.1997.

6. It is contended by the applicant that only after a gap of 3 years, and that too after multiple reminders from the applicant he came to know vide order dated 16.06.1997 that his appeal regarding disability pension was dismissed due to his disability being a constitutional disorder. Thus, the applicant further preferred a second appeal dated 26.11.2015 against the rejection of first appeal.

7. It is elaborated by the applicant that he was called for an Appeal Medical Board on 26.06.2017, which recommended that the disability IHD (Angina Pectoris) is

attributable to service and the same was assessed @ 60% for life. But even then the competent authority rejected the second appeal of the applicant holding the disability to be NANA vide their letter no B/38046A/35/2017/AG/PS-4(2nd Appeal) dated 08.12.2017.

8. With respect to the prayer for grant of service pension, it is submitted by the applicant that he has rendered a qualifying service of 20 years in two spells as the Regulation 25 of the Pension Regulations of the Army, 1961. In the first spell, he served from 28.08.1972 to 24.10.1982 and in the second spell, he served from 29.12.1983 to 05.03.1994, which accounts for his service of more than 20 years.

9. Per Contra, learned counsel for the respondents submits that under the provisions of Regulation 81(a) and 53(a) of the Pension Regulations for the Army, 1961, the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by military service and is assessed @ 20% or more.

10. Relying on the aforesaid provision, learned counsel for respondents further submits that the aforesaid disabilities of the applicant were assessed as "attributable to but nor

aggravated" by military service and the competent authority after examining the case in light of relevant rules and administrative/medical provisions decided that the disability of the applicant was not connected with the military service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

11. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that as far as prayer for grant of disability element of pension is concerned, it is not in dispute that the extent of disability - IHD (Angina Pectoris) was assessed to be above 20% which is the bare minimum for grant of disability pension in terms of Regulation 81(a) and 53(a) of the Pension Regulations for the Army, 1961.

12. With regards to the service pension, after going through the Pension Regulations for the Army, 1961, we find it pertinent to refer to Rule 25 of Pension Regulations for the Army, 1961 (Part-I),¹ reproduced as under:

Minimum qualifying service

25. (a) The minimum period of qualifying service required for the retiring pension is 20 years (15 years in the case of a late entrant- see regulation 15). Only completed years of qualifying service shall count.

¹ Downloaded from official website of Department of Ex-servicemen welfare < www.desw.gov.in >

13. On a brief look at the aforesaid provision, we observe that the minimum qualifying service for grant of service pension is 20 years, and there is no restriction to grant of service pension even if the service is rendered in two spells. Furthermore, in absence of any contrary submission to the effect brought by the Respondents in their Counter Affidavit or arguments, we are of the opinion that since the applicant has rendered 20 years of service as mandated by Rule 25(a) of the Pension Regulations for the Army, 1961, the applicant is eligible for service pension.

14. As far as disability of the applicant - IHD (Angina Pectoris) is concerned, we find that there is no record of Release Medical Board placed before us, neither by the applicant, nor the respondent. Evidently, it has been submitted by the Respondents that the RMB has been weeded out and thus, the applicant was subjected to second Appeal Medical Board.

15. On a perusal of the second Appeal Medical Board, we find that the disability of the applicant has been held to be attributable to service by the Medical Board, while being assessed @60%, thereby, fulfilling the requisite conditions, and hence, the applicant is entitled for disability element of pension.

16. With respect to the decision by the competent authority, 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.

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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."

17. 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. 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 Appeal Medical Board had determined the invaliding disease and assessed his disability @ 60%. With respect to the applicant's prayer that the disability be granted @100%, we find that there is no evidence in the form of RMB or any other record to suggest that disability was assessed to be 100%, and that it was only assessed @60% by the Appeal Medical Board and thus, the prayer cannot be acceded to.

18. Further, in view of the judgment of the Hon'ble Supreme Court in Union of India and others Vs. Ram Avtar in C.A No. 418 of 2012 dated 10.12.2014, the applicant is entitled to get the disability element of pension @60% broad banded to 75%, based on the Government notification dated 31.01.2001.

19. Based on the abovementioned consideration, the OA is partially directing the respondents to grant disability element of pension to the applicant @ 60% and broadband the same to 75% from the date of his retirement. Further, the applicant shall also be granted the service pension since he has completed the requisite requirements for grant of service pension. The directions shall be complied within a period of four months from the date of receipt of this judgment, failing

which the applicant shall be entitled to an interest of 6%p.a. till the date of actual payment. However, the arrears will be restricted to three years from the date of filing of this OA (04.07.2018) in view of the law laid down in the case of Union of India and others Vs. Tarsem Singh [2008 (8) SCC 649].

20. Pending miscellaneous application(s), if any, are disposed of in terms of above order.

21. No order as to costs

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

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

Akc/