

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

OA 1492/2018

WITH

MA 1899/2018

Ex NK D. K. Sharma		Applicant
VERSUS		
Union of India and Ors.		Respondents

For Applicant	:	Mr. A K Trivedi, Advocate
For Respondents	:	Mr. Anil Gautam, Sr. CGSC

Dated: 25th September, 2025

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

MA 1899/2018

Keeping in view the averments made in this application and finding the same to be bona fide, in the light of the decision in the case of Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the instant application is allowed condoning the delay in filing the OA. MA stands disposed of.

OA 1492/2018

2. By way of this OA, filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant seeks a direction to the respondents to grant him disability element of pension. He

further seeks direction to declare the action of the respondents discontinuing his disability element of pension as illegal, arbitrary and against the judicial pronouncements. The reliefs claimed in the OA read as under:

(a) Declare the whole action of the respondents as illegal, arbitrary and against the judicial pronouncement on the subject for discontinuing the disability element of pension w.e.f. 10/12/2005.

(b) Issue declaration to the effect that the Pension sanctioning Authority i.e. PCDA(P) Allahabad has no authority to sit over the appeal of Medical Board and the assessment made by the Medical Board is final.

(c) Direct the respondents to grant the disability element of pension to the applicant w.e.f. 01/08/2000 @ 50% till for life in view of judicial pronouncement on the subject with all consequential benefits including arrears of pension with interest.

(d) Any other order as may be deemed fit and proper in the facts and circumstances of the case.

(e) Award cost

3. The factual matrix of the case indicate that the applicant was enrolled in the Indian Army in physically and mentally fit condition on 27th July, 1978 and after completion of about 22 years of service was discharged from service on 1st August, 2000. Before discharge the applicant was brought before the Release Medical Board and on examination was recommended to be released from service in low medical category for the disability of Lumbar Spondylosis assessed @ 11-14% and held to be

aggravated but not attributable to military service. The probable duration of his degree of disablement was assessed for five years. On consideration of his claim for disability element of pension, the applicant vide PPO dated 20th March, 2001, was intimated that he has been granted disability element of pension for the period August 2000 to February 2005. Vide order dated 28th November, 2001 the applicant was further informed that PCDA (P), Allahabad has issued corrigendum PPO dated 28th May, 2001 revising his disability pension for the period 1st August, 2000 to 9th February, 2005. Before completion of temporary period of assessment, on 19th April 2002, the applicant was brought before the Re-survey Medical Board in accordance with Para 7 and 8 of the Government of India (MOD) letter No.1(2)97/D(Pen C) dated 7th February, 2001 to assess his disability and the duly constituted Re-survey Medical Board assessed the same at less than 20%. Thereafter, the Record Office vide letter dated 3rd December, 2002 processed the reassessment of disability element claim of the applicant with PCDA (P) and informed the applicant that since his re-assessment claim of disability pension, adjudicated in consultation with the Medical Adviser (P), has been reassessed at less than 20% for life with effect from 19th April, 2002, he is not entitled to disability element of pension and that he will not be brought before the Re-

survey Medical Board in future. The applicant was also advised to file an appeal within six months from 19th February, 2003. The first appeal of the applicant denying him disability element of pension was rejected on the ground that it was filed beyond more than five years of the passing of order.

4. It is the contention of the applicant that the order of PCDA has not been received by him. It is submitted that as per Government of India Ministry of Defence Order dated 7th February, 2001 with regard to assessment of disability, the recommendation of the Invaliding Medical Board/Release Medical Board would be final for life unless the individual himself requests for a review except in cases of disability which are of a permanent nature and in case there is a difference of opinion with respect to assessment between the initial award given by Medical Board and MA (P), the case will be referred to Review Medical Board constituted by DGAMSF whose opinion shall be taken as final. It is inter alia contended that no such exercise has been done by DGAMSF and, therefore, the reduction in assessment of the disability below 20% is bad and cannot stand the scrutiny of law. It is further stated that the PCDA (P) has no authority to disagree with the findings and assessment made by the IMB/RMP.

5. It is also contended on behalf of the applicant that the action of the respondents in suddenly and without any valid reason discontinuing payment of disability element of pension to the applicant, which was sanctioned for the period from 1st August, 2000 to 9th February, 2005, is wholly illegal, arbitrary and unjust.

6. It is inter alia contended that as per Government of India, Ministry of Defence order dated 31st January, 2001 all Army personnel whose disability has been assessed @ 20% per cent are entitled to disability @ 50%. Therefore, the applicant is also entitled to the similar treatment.

7. Referring to the decision of the Apex Court in the case of Ex-Sapper Mohinder Singh Vs. Union of India (C.A No. 164/1983) decided on 14th January, 1993, the applicant contends that PCDA (P) Allahabad has no authority to sit over the findings of the Medical Board, an expert body on the subject. It is further contended that in view of the judgment of the Hon'ble Supreme Court in the case of Government of India Vs. Ram Avtar (CA 418/2012) decided on 10th December, 2014 and also in view of Government of India, Ministry of Defence notification dated 31st January 2001, he is entitled to rounding of the disability element of disability pension @ 50% from 1st August, 2000.

8. The respondents have filed the counter affidavit and facts to the extent that the RMB was held in January 2000 and the applicant was granted disability element of pension @ 20% from 1st August, 2000 to 9th February, 2005 and that a Resurvey Medical Board, before completion of temporary assessment period of five year, was conducted on 19th April, 2002 which assessed the disability of the applicant at less than 20% i.e., 11-14% and further that the re-assessment of disability element claim was processed by AMC (Record) with PCDA (P) Allahabad but the same was rejected by the PCDA (P) on the sole ground that the Resurvey Medical Board had reassessed the disability of the applicant @ 11-14% which is less than 20% are not disputed.

9. The contention of the respondents is that based on the assessment of the Re-survey Medical Board in accordance with Para 7 and 8 of Ministry of Defence letter No. 1(2) 97/D (Pen C) dated 7th February, 2001, since the disability of the applicant was assessed at less than 20%, the applicant is not entitled to grant of disability element of pension.

10. To deny the claim of disability element of pension, the respondents have also referred to Para 173 of the Pension Regulations for the Army 1961 (Part I) submitting that only a personnel who has been invalided out of service on account of

disability which is attributable to and aggravated by Military Service and assessed @ 20% or above is entitled to disability element of pension and since the disability of the applicant is held to be NANA and assessed below 20% by the Resurvey Medical board, the applicant is not entitled to grant of disability element of pension.

11. On consideration of the submissions made on behalf of either party, the question that needs to be answered in these proceedings is as to whether Resurvey Medical Board was right in assessing the disability of the applicant less than 20%.

12. The Release Medical Board, on examination, assessed the disability of the applicant as not attributable to but held it aggravated by Military Service due to physical stress of service with disablement @ 11-14% for five years. The PCDA on examination of the claim granted disability element of pension @ Rs.90/- per month with effect from August 2000 to February 2005 which vide PPO No.DE/014629/2000 dated 20th March, 2001 was further revised to Rs.310/- per month.

13. Since the disability pension was granted only for five years and before completion of this period, the Resurvey Medical Board in terms of Para 7 and 8 of Government of India, Ministry of Defence, letter No.1(2)/97/D (Pen-C)

dated 7th February, 2001, as is evident from the record, was held on 19th April, 2002 and reassessed the disability of the applicant at less than 20%, the grant of disability element of pension was processed with PCDA (P), Allahabad, who rejected the same stating that *“the reassessment claim of disability pension in respect of the above named petitioner has been adjudicated in consultation with Medical Adviser (Pensions) attached to this office and it has been decided that his ID has been revised and reassessed at less than 20% for life with effect from 19th Apr 2002, no disability element of pension is therefore admissible to him under the existing Rules.”*

14. The applicant in the present case was discharged from service on 1st August, 2000` due to his being in low medical category for the disability of Lumbar Sypondolysis which was assessed @ 11-14% and held to be NANA. It cannot be disputed that the applicant was initially granted disability element of pension for five years from 1st August, 2000 to 9th February 2005 @ 20%, though the RMB assessed it @ 11-14%. The reasons for grant of disability pension @20% by PCDA are not found on record. During oral submission it was submitted that probably the disability element was granted erroneously. However, thereafter, on the basis of the findings of the RSMB held on 19th April, 2002, which reassessed the disability @ 11-

14% for life, the disability element of disability pension was discontinued with effect from 19th April, 2002. The recommendations of the RSMB were duly approved by the approving authority, i.e., DADH for DDMS.

15. The Medical Board which is an expert body consists of specialists on the subject in the field of medical science, this Tribunal has no relevant expertise on the subject and thus we do not consider it appropriate to interfere in the matter of assessment of disability of the applicant. We are fortified in our view as on the point of giving weightage to medical Board's opinion. It has been well settled by the Hon'ble Supreme Court in the case of Union of India and Anr. Vs. Rfn Ravinder Kumar (Civil Appeal No.1837/2009) decided on 23rd December, 2012 that the opinion given by the expert Medical Board should be given due weightage and credence and it has been held as under:

"Opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension brushing aside the opinion of the Medical Authorities, record the specific finding to the effect that the disability was neither attributable to nor aggravated by military service, the court should not ignore such a finding for the reason that Medical Board is specialized authority composed of expert medical doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability due to military service and the conditions of service resulting in disablement of the individual".

16. The Hon'ble Supreme Court in the case of Cfn Narsingh Yadav Vs. Union of India and Ors. (Civil Appeal No.7672/2019) in para 21 also held as under:

"21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board."

17. We also do not hesitate to note that usually the report of the latest Medical Board is given weightage in the matter of deciding the eligibility of grant of disability element of disability pension and in the case at hand the Resurvey Medical Board reassessed the disability of the applicant @ 11-14% and also held it NANA.

18. In view of the above and after considering all relevant aspects and the fact that the applicant was granted disability element of disability pension for five years when his disability was assessed @20%, we are of the considered view that the Resurvey Medical Board was right in re-assessing the disability of the applicant @ 11-14, i.e., less than 20% and, therefore, there is no error in the respondents discontinuing the disability element of pension with effect from 19th April, 2002 as usually the disability pension is granted based on the assessment of the most recent Medical Board. We do not find any valid or strong reason nor does the applicant has been able to bring on record any

material so as to dispute the opinion of the RSMB. The question is thus answered in the affirmative.

19. Accordingly, we find no merit in the prayers made by the applicant and the OA is thus dismissed.

Pronounced in open Court on this day of September, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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