

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

OA 1690/2018

EX CFN Ishwar Singh

.... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate

For Respondents : Ms. Barkha Babbar, Advocate

CORAM

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

HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

O R D E R

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (AFT Act), 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 B/40502/215/04/AG/PS-4(Imp-II) dated 17.03.2005.

And/or

(b) Direct respondents grant disability element of pension including benefit of broad banding/rounding off with effect from the date of his invalided out from service due to low medical category for injury “CRUSH INJURY MIDDLE and RING FINGER N-927” which is of permanent nature.

And/or

(c) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date of discharge with all the consequential benefits. And/or
(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."

BRIEF FACTS

2. Ex CFN Ishwar Singh (hereinafter referred to as the "Applicant") was enrolled in the Army (Corps of EME) on 30th July 1985 and was discharged from service on 31st July 2001 on being placed in Low medical category after rendering 16 years 01 day of regular service. Prior to his discharge from service, the applicant was subjected to a Release Medical Board¹ (AFMSF-16) which considered the disability namely **"Crush Injury (RT) Middle and Ring Finger"** of the Applicant as attributable to military service but assessed the same at less than 20% i.e. (15-19%) for two years.

3. In view of his discharge from service, he was sanctioned service pension, death-cum-retirement gratuity and commutation benefits but his claim for disability element of

¹ For short, 'RMB'

pension was rejected by PCDA(P) Allahabad vide letter dated 26 Dec 2001 as it did not meet the prescribed minimum threshold of 20%.

4. Subsequently his disability was reassessed by Re-Survey Medical Board² (AFMSF-17) on 18 March 2003 which again re-assessed the disability of the Applicant at less than 20% i.e. 15-19% for life. His claim was once again rejected by PCDA(P) Allahabad vide letter No. G-3/2003/1264VII dated 27 May 2003 on the ground of the disability being less than 20%. The outcome was communicated to the applicant vide EME Records letter No. 14584257/RA-9/Pen dated 17 June 2003.

5. The applicant preferred first appeal dated 08 July 2003 against rejection of his disability pension. Thereafter, the applicant served a legal notice dated 24 July 2004 which was processed and referred to AG/PS-4(d). The first appeal of the applicant was rejected vide letter No. B/40502/215/04/AG/PS-4 dated 17 March 2005 on same grounds.

² For short, 'RSMB'

6. Aggrieved by the decision of the respondents, the applicant has filed the instant OA.

CONTENTIONS OF PARTIES

7. The learned counsel for the applicant contended that the applicant sustained injury while performing duties in the unit and was placed in Low Medical Category. The disability of the applicant was held to be attributable to military service, however, the same was assessed at 15-19%. Relying upon the order of this Tribunal in O.A. No. 320/2015 titled as ***Ex Sepoy Jai Singh Vs. Union of India & Ors***, it was argued that there cannot be any formula to assess the disability with absolute exactness, to extent of even one percent.

8. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed, as applicant's disability does not fulfil the primary conditions for grant of disability pension as given in Para 173 of Pension Regulations for the Army, 1961 (Part-I) of being assessed @20% or more, he is not entitled to disability pension. It was contended that although the duly constituted Medical Board considered the disability of the applicant as 'attributable to military service', but the same was assessed

at less than 20% i.e., 15-19% for two years by the RMB and at less than 20% for life by the RSMB on 18.03.2003. Hence, the claim as well as the first appeal of the applicant was rightly rejected by PCDA (P) Allahabad and First Appellate Committee respectively.

9. It was further argued by learned counsel for the respondents that the RMB and RSMB, being an expert medical body which had physically examined the applicant, rightly assessed the disability of the applicant at less than 20% and due weightage, value and credence must be accorded to the opinion of the medical board. In this regard, reliance was placed on the judgment of the Hon'ble Supreme Court dated 20.08.2009 in Civil Appeal No. 5678/2009 arising out of SLP (C) 23727/2008 filed by the **Secretary, Ministry of Defence & Others v. Late Sep Damodaran AV**, wherein the apex court held that the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence.

10. Learned counsel further submitted that the applicant was not invalided out of service but was discharged from service not solely on medical grounds. In fact, he was discharged from service on 31.07.2001 after expiry of

engagement on completion of 16 years and 1 day of qualifying service. Subsequently, he was sanctioned service pension as well.

11. It was further submitted that there was no ill or mala fide intention on the part of respondents in assessing the disability at less than 20%. The assessment of disability at 15-19% itself implies that its severity did not warrant assessment at 20% or more. Therefore, since the disability has been consistently assessed at less than 20%, i.e., 15-19%, the applicant is not entitled to grant of disability pension or rounding off. Hence, the present OA is liable to be dismissed.

ANALYSIS

12. Having carefully perused the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that this application deserves to be allowed.

13. It is not in dispute that the applicant served in the Indian Army for about 16 years and the disability of **“Crush Injury (RT) middle and ring finger”** was sustained on 10.11.1995, after completion of one year of service, while he was cleaning a weapon during unit hours. The Release

Medical Board assessed the said disability as attributable to military service. However, the extent of disability was assessed at less than 20%, which is the bare minimum for grant of disability pension in terms of Para 173 of the Pension Regulations for the Army, 1961 (Part I).

14. There is no gainsaying that the opinion of the Medical Board, being an expert body, has to be given due weight and credence. But at the same time, such opinion cannot be read in isolation and has to be read in consonance with the Entitlement Rules, General Rules of Guide to Medical Officer.

15. The court finds that this assessment of disability percentage at 15-19% shows lack of application on behalf of the medical authorities in the case of the Medical Board, who appear to have made up their mind, in a pre-mediated manner, to deny disability benefits to the applicant. Since as per the Guide to Medical Officers (Military Pension), 1980, the minimum assessment for **“Loss of two fingers on either hand”** is specified as 20%. Hence, the disability of the applicant has to be assessed to 20% minimum.

16. A similar view was taken by this tribunal in the case of ***Ex Sep Sukhbir Singh Vs. UOI & Ors.*** [O.A. No. 238 of 2014]

wherein it was observed that:

“3. So far as denial of the disability pension to the person because of having disability 15-19% cannot be accepted as a valid reason for the simple reason that there is no exact barometer to test the disability to the extent of correctness upto 1%. This view finds support from the fact that the Government itself has provided that percentage of disability may vary in the various brackets of percentages. Therefore, in this case the petitioner may have the disability to the extent of 19%. Petitioner is then denied the disability pension for lifelong, only because of the assessment of disability only one percent less. This we have not accepted in our earlier orders also and therefore, we are of the view that, there may be variation in the assessment of the percentage of the disability and even if we take plus minus 2% then also the petitioner is entitled to disability pension. As per the Pension Regulations, in a case of doubt the benefit goes to the applicant. Therefore, the petitioner was wrongly denied the disability pension.

5. Further more probably, finding this position the Government itself took a decision on 31.01.2001 to round off of the disability pension only in three categories i.e. if less than 50% then it is to be treated as 50%; if it is from 50% to less than 75% it is to be treated as 75% and 75 to 100% to be treated as 100%.

6. Therefore, in our opinion petitioner is entitled to the disability pension and after rounding off of his disability pension, the petitioner is entitled to disability pension@ 50%.

7. The OA is allowed. The petitioner is entitled to 50% disability pension. The petitioner shall be entitled to arrears for the past three years from the date of filing of the OA which was filed on 7.5.2014 with interest @ 9% per annum. The order be implemented within a period of three months from the date of receipt of copy of the order.”

17. In view of the above, we are of the considered opinion that the applicant, having been discharged from service in a low medical category on account of disability which was assessed as ‘attributable to military service’, is entitled to the grant of disability element of pension.

CONCLUSION

18. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 20% for life rounded off 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.

19. 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. The amount of arrears however are directed to commence to run from a period of three years prior to the institution of the present OA, in terms of the verdict of the Hon'ble Supreme Court in **Union of India & Ors Vs Tarsem Singh** reported in 2008 8 SCC 648 which shall be paid by the respondents, failing which the applicant will be entitled for interest @ 6% p.a. from the date of receipt of copy of the order by the respondents.

20. There is no order as to costs.

Pronounced in the open Court on this 25th day of September, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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