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

OA 1921/2018

Lt. Col Vinod Ravi Mehra (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Anil Srivastava, 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

This is an application filed under Section 14 of the Armed Forces of Tribunal Act, 2007 for grant of disability pension @ 20% to be broad banded to 50%. The prayers made in Para 8 read as under:

(a) Direct the Respondents to pay disability pension of @ 20%, duly broad banded to 50% with effect from 31.01.2001 alongwith 12% interest on the arrears thereof.

(b) That Applicant be awarded cost of the litigation @ Rs. 50,000/-

(c) To pass any such other and further order or orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice and in the facts and circumstances of the case.

2. The applicant was commissioned in the Indian Army on 16th June, 1963 in shape-1. After putting about 28 years

of service, the applicant in the year 1991 took premature retirement. During the period from December 1986 to July 1989 the category of the applicant was downgraded from A4 (T-4) to A3 (P) for the disability of lower backache. In September 1990, the Release Medical Board of the applicant was held assessing the disability @ 20% for two years.

3. The grievance of the applicant is that he has been denied disability pension @ 20% to be broad banded to 50% to which he is otherwise entitled to in view of the policies and pronouncements of Hon'ble Supreme Court as well as this Tribunal. His further contention is that at the time of entry into service he was thoroughly examined by a duly constituted Medical Board, which found him fit for military service and there was no note to the contrary recorded in his medical record at that time. It is also contended that since his disability has been assessed @ 20% and held aggravated by military service, he is entitled to disability pension. He thus prays that the OA may be allowed.

4. The respondents have filed a detailed counter affidavit. It is submitted that in the case of a pre-2006 premature retirement case in terms of Government of India, Ministry

of Defence letter No. 16(05)/2008/D (Pen/Policy) dated 19th May, 2017, grant of benefits of disability pensions are subject to the condition that the disability was held attributable to or aggravated by military service and the individual had foregone lump sum compensation in lieu of the disability. This letter reads as follows:

*No.16(5)/2008/D(Pen/Policy)
Government of India
Ministry of Defence
Department of Ex-Servicemen
Welfare*

To

*The chief of the Army staff,
The Chief of the Naval Staff,
The Chief of the Air Staff*

*Subject:- Implementation of
Government decision on the
recommendations of the Sixth
Central Pay Commission –
Revision of provisions
regulating Pensionary Awards
relating to disability
pension/war injury pension
etc for the Armed Forces
Officers and Personnel Below
Officer Rank (PBOR) on
voluntary
retirement/discharge on own
request on or after 1.1.2006.*

Sir,

The undersigned is directed to refer to Note below Para 8 and Para 11 of this Ministry's letter No.1(2)/97/D(Pen-C) dated 31.1.2001, wherein it has been provided that Armed Forces personnel who retire voluntarily or seek discharge on request, shall not be eligible for any award on account of disability.

2. In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntary or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity. (emphasis supplied)

3. The provisions of this letter shall apply to the Armed Forces personnel who are retired/discharged from service on or after 1.1.2006.

4. Pension Regulations for the Services will be amended in due course.

5. This issues with the concurrence of Ministry of Defence (Fin) vide their U.O.No.3545/(Fin/Pen) dated 29.9.2009.

6. Hindi version will follow.

Yours faithfully,

(Harbans Singh)

Director (Pen/Policy)

Copy to:-

As per the stand list.

5. Learned counsel for the respondents seeks dismissal of the OA on the ground of huge delay of 25 years as well and in support of his submissions he relies on the judgments of the Hon'ble Supreme Court in Union of India and Others Vs. Rajwanti (Civil Appeal No.583-584/2017) decided on 16th January, 2017.

6. It is further submitted that the applicant was granted disability pension for his disability of low backache V-67 @20% for two years and there is no record available to show that the applicant represented or appeared before the concerned authority for RSMB which was necessary to assess the disability status after two years and to cure the ailment and it is almost 25 years now when the applicant sought premature retirement, therefore, he is not entitled to any relief.

7. It is further submitted that the applicant being a pre 2006 retiree case did not submit the certificate with regard to non-receipt of lump sum compensation in lieu of his disability as spelled out in the letter of May 2017, quoted hereinabove.

8. Learned counsel further submitted that so far as reliance placed by the applicant on the case of Ramesh Kumar Bharadwaj is concerned, the applicant in that case was not granted any disability pension and this Tribunal only struck down Clause 3 of Government of India Ministry of Defence Notification dated 29th September, 2009 and directed the applicant to make a representation to the competent authority to seek disability pension in terms of the

said policy letter. Therefore, the case relied upon by the applicant is of no help to him.

9. We have heard learned counsel for the parties and have also perused the documents available on record and the case law relied upon by them. We have also gone through the RMB proceedings. We find that as the disability suffered by the applicant has been accepted as aggravated by military service but assessed @20% for two years, the question that needs to be answered by us is very simple *'as to whether the applicant is entitled to disability element along with service pension consequent to the MoD letter dated 19th May, 2017 and if yes for which period?'*

10. It is evident from the record that the onset of the disease was in 1965, i.e., after two years of the applicant's joining the service. The RMB assessed the disability of the applicant @ 20% for two years. The applicant has miserably failed to produce any document evidencing any steps taken by him for periodic review so as to reassess or monitor any degradation or improvement in his low backache. There is nothing on record to show that the applicant made any efforts to get his RSMB done after two years, i.e. in 1993. The

low backache is not a permanent ailment and with the passage of time and with regular exercise suggested by the medical expert there are definite chances of its improvement.

11. It is well settled proposition of law that the RMB proceedings are primary medical evidence and unless there is strong counter evidence available to dispute it, the same has to be accepted and given due weightage. The Hon'ble Supreme Court in the case of Union of India and Ors. Vs. Ravinder Kumar (Civil Appeal No.1837/2009) vide its judgment dated 23rd May, 2012 had held that opinion of the Medical Board should not be over ruled judiciously unless there is a very strong medical evidence to do so. The relevant part of the judgment reads as under:

“Opinion of the Medical Board 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 specialised 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.

12. In another case Ex Cfn Narsingh Yadav Vs. Union of India and Ors. (Civil Appeal No.7672/2019) decided

on 3rd October, 2019, it has been held that all disorders cannot be detected at the time of recruitment and their subsequent manifestation (in this case after two years) does not entitle a person for disability pension unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board.

13. This is a case where the RMB has conceded the disease low backache @20% for two years as aggravated by military service. It was incumbent upon the applicant to have sought for a Resurvey Medical Board on or before the initial period of two years. It is an undisputed fact, as is evident from the record, that the applicant never underwent or sought for a Resurvey Medical Board and consequently it is the RMB proceedings that will be having primacy. In this regard we may also refer to Para 3 of the Government of India Policy letter No.1(2)97/D(Pen-C) dated 7th February, 2001 which reads as under:

“Para 3 – Assessment: The assessment with regard to the percentage of disability as recommended by the Invaliding Medical Board/Release Medical Board as approved by the next higher medical authority, would be treated as final unless the individual himself requests for a review.”

As the medical literature suggests the duration of award of low backache due to muscular facial strain should be for a maximum period of five years and depending upon clinical and radiological findings can be extended further. There is no such assessment or medical record made available to us or placed on record after initial RMB held in September 1990. Therefore, in the absence of any other opinion of a higher board, we are left with no option but to accept the opinion of the Release Medical Board which assessed the disability only for two years.

14. We may, however, note that the Release Medical Board held the disability Low Backache aggravated by military service and assessed @ 20% for two years. There is no dispute to this extent. Therefore, in our considered opinion the applicant is entitled to the disability element of disability pension @20% to be rounded off to 50% in terms of the judgment of the Hon'ble Supreme Court in the case of Union of India and Ors. Vs. Ram Avtar (Civil Appeal No.418/2012) decided on 10th December, 2012 for a period of only two years from the date of discharge of the applicant as held by the Release Medical Board. As far as entitlement beyond the period of two years is concerned, since the applicant took no

steps to get his RSMB done and in the absence of any other opinion of a higher board, primacy has to be give to the opinion of the Release Medical Board which assessed the disability only for two years.

15. In view of the above the OA is partially allowed to the extent indicated above. The respondents are directed to calculate, sanction and issue necessary PPO to the applicant within a period of three months from the date of receipt of a copy of this order. Default shall result in interest @ 8% p.a. There shall, however, be no order as to costs.

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

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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