

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

**OA 2003/2018**

**Ex GNR Bhola Ram**

..... **Applicant**

**VERSUS**

**Union of India and Ors.**

..... **Respondents**

**For Applicant**

: Mr. Virender Singh Kadian, Advocate

**For Respondents**

: Mr. Anil Gautam, Sr. CGSC

**CORAM**

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

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

**ORDER**

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under:

- “(a) quash and set aside the impugned letter No 1196336/LC/02/NE-S(C) dated 26.10.2018. And/or  
(b) Direct respondents to grant disability element of pension including benefit of broad banding/rounding off with effect from the date of discontinuation of disability element of pension. And/or  
(c) Direct respondents to pay the due arrears of disability 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 OF THE CASE**

2. The applicant was enrolled in the Indian Army on 03.10.1963. After serving for approximately 12 years, he was discharged from service on 05.10.1975 under Army Rule 13(3) Item III(v) as he was placed in a medical category lower than 'AYE'. At the time of discharge, the applicant was placed in Low Medical Category "CEE" (Permanent) due to the disability "**SPRAIN (LT) ANKLE (OLD) Y-34**".

3. Prior to his discharge, he was brought before a Release Medical Board (RMB) held at Military Hospital, Meerut on 21.07.1975. The RMB assessed the applicant's disability as attributable to military service due to an injury sustained while performing military duty. The degree of disability was assessed at 20% for two years.

4. Based on the RMB proceedings, the Pension Sanctioning Authority, i.e., PCDA(P) Allahabad, accepted the claim and granted the disability element of pension @ 20% for two years from 05.10.1975 to 20.07.1977 vide PPO No. D/16/76 dated 19.01.1976. The applicant was also granted

the Service Element of the disability pension for life w.e.f. 21.07.1977.

5. Subsequently, upon the expiry of the initial grant, the applicant was subjected to a Re-Survey Medical Board (RSMB) to assess his entitlement for further continuation of the disability element of the disability pension. The PCDA(P) Allahabad, vide letter No. G-3/RA/181/531/VI dated 20.02.1981, notified that the applicant's disability had been re-assessed as "Nil" for life (less than 20%).

6. The decision of the RSMB and the rejection of the disability pension claim were communicated to the applicant by the Artillery Records vide letter No. 1196336/RP/DP-12250/NE dated 06.03.1981. The applicant did not prefer any appeal at that stage.

7. Decades later, the applicant served a Legal Notice dated 26.09.2018 requesting the grant of disability pension. The Respondents rejected this request vide the impugned order No. 1196336/LC/02/NE-5(c) dated 26.10.2018, stating that the case could not be reopened as the applicant had failed to appeal the 1981 decision within the stipulated time

frame and that the relevant documents had been destroyed after the retention period.

8. Aggrieved by the aforesaid rejection of his claim and the denial of the disability element and broad-banding benefits, the applicant has filed the present Original Application.

### ***SUBMISSIONS ON BEHALF OF APPLICANT***

9. The learned counsel for the applicant submitted that the Applicant was enrolled in the Regiment of Artillery on 03.10.1963 and served sincerely until he was invalided out of service on 05.10.1975 after rendering approximately 12 years of service. It was contended that at the time of discharge, the applicant was placed in Low Medical Category "CEE" (Permanent) due to the disability "**SPRAIN (LT) ANKLE (OLD) Y-34**".

10. The learned counsel highlighted that the Release Medical Board (RMB) held at MH Meerut on 21.07.1975 had explicitly assessed this disability as attributable to military service at 20% for two years. The counsel argued that since the disability was contracted during service and is

attributable to it, the applicant is entitled to the disability element for life, as the disability persists to this day.

11. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Union of India & Ors vs. Ram Avtar (Civil Appeal No. 418 of 2012)***, it was submitted by the Ld. Counsel for the applicant that the Hon'ble Apex Court has clearly held that the benefit of 'Broad Banding' or rounding off of disability pension is to be extended to all personnel who are invalided out of service with a disability attributable to or aggravated by military service. Therefore, it was prayed that the applicant's disability, initially assessed at 20%, should be rounded off to 50% for the purpose of pensionary benefits.

12. The learned counsel for the applicant had also placed reliance on the decision of the Hon'ble Supreme Court in ***Union of India Vs. Tarsem Singh (2008) 8 SCC 648***, contending that the claim for pension is based on a recurring cause of action. The counsel argued that the impugned order dated 26.10.2018, which rejected the applicant's claim based on the delay, is legally unsustainable as the bar of limitation does not strictly apply to continuing wrongs such as the denial of pensionary benefits.

### ***SUBMISSIONS ON BEHALF OF RESPONDENTS***

13. Per contra, the learned counsel for the respondents submitted that while the applicant was initially granted disability pension for the limited period from 05.10.1975 to 20.07.1977, his continued entitlement was legally subject to re-assessment.

14. It is emphasized that upon the expiry of the initial grant, the applicant was subjected to a Re-Survey Medical Board (RSMB). The Competent Authority, PCDA(P) Allahabad, vide letter No. G-3/RA/181/531/VI dated 20.02.1981, notified that the applicant's disability had been re-assessed as "Nil" for life.

15. It was further submitted by the Respondents that since the disability was re-assessed at less than 20% by the RSMB, the applicant ceased to be eligible for the disability element. The counsel further pointed out that this decision was communicated to the applicant vide Artillery Records letter dated 06.03.1981, with specific advice to prefer an appeal within six months, which the applicant failed to do.

16. The learned counsel for the respondents relied on the Government of India, Ministry of Defence letter No.

1(2)/97/D(Pen/Pol) dated 31.01.2001 and letter No. 17(01)/2017(02)/D(Pen/Pol) dated 05.09.2017. Relying on these policy guidelines, the counsel contended that the benefit of rounding off (broad banding) is strictly applicable only to those personnel whose disability is assessed at 20% or more. Since the applicant's disability was re-assessed as "Nil" for life by the RSMB, it is submitted that the ratio of the **Ram Avtar (supra)** is not applicable to the facts of the present case. Consequently, it was prayed that the OA be dismissed on the grounds of merit as well as the inordinate delay of nearly four decades.

### **ANALYSIS**

17. Though the applicant, through this OA, sought for the grant of the disability element of disability pension and the benefit of broad banding to 50% with arrears and interest, the fundamental issue that arises for determination is whether a claim that was medically rejected and closed in 1981 can be validly reopened and granted after a hiatus of nearly four decades. It is settled law that the mere serving of a legal notice or representation after an inordinate delay of

four decades cannot be a valid ground for reviving a stale or dead claim which had already attained finality.

18. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that the claim constitutes a "stale claim" and is devoid of merit. It is an undisputed fact that while the applicant was initially granted disability pension for a limited tenure from 1975 to 1977, his continued entitlement was subject to re-assessment. Upon the expiry of the initial grant, the applicant was subjected to a **Re-Survey Medical Board (RSMB)**. The said Board, which is the competent expert body to review the medical condition, re-assessed the applicant's disability as "**Nil for life**".

19. This critical finding of "Nil" disability was communicated to the applicant on 06.03.1981 with specific advice to prefer an appeal within six months. The applicant chose not to challenge this finding at the relevant time and remained silent for nearly 37 years, thereby allowing the order to attain finality.

20. With respect to the merits of the case and to put the facts in perspective, we find it pertinent to reproduce the sequence of medical assessments is tabulated below:

No.	Disability assessed by		Disability assessed for the period		PPO No. And Date
	Medical Board	PCDA	From	To	
1.	20%	20%	21.07.1977	12.06.1979	D/RA/13371/77 dt 15.09.1977
2.	20%	20%	13.06.1979	08.02.1981	D/RA/8481/79 dt 09.07.1979
3.	11-14%	Less than 20%	09.02.1981	09.02.1982	G-3/RA/181/1531/VI/ dt 20.02.1981
4.	15-19%	15-19%	10.09.1982	09.09.1992	G-3/RA/82/15634/I dt 20.12.1982
5.	Nil	Nil	10.09.1992	For Life	G-3/RA/7/92/8883/I

21. From a perusal of the aforesaid records, we find that the disability of the applicant was assessed @20% w.e.f. 21.07.1977 to 08.02.1981 and he has been granted disability pension for the same. Subsequently, during the subsequent RSMBs, from 09.02.1981 to 09.09.1982, the disability was assessed @11-14%, from 10.09.1982 to 09.09.1992, the disability was assessed @15-19% and then, from 10.09.1982 for life, the disability was assessed @NIL %.

22. With a cursory view of the medical records, it is clear that the disability **SPRAIN (LT) ANKLE (OLD) Y-34** is not a

disability of permanent nature, and it heals with time, and thus, the %age of the disability has been reduced with time, as the disability is known to heal with time.

23. We further note that a similar issue pertaining to identical disability has been dealt by this Tribunal in **Col L.B. Malla v. Union of India & Ors. [RA 16/2019; AFT PB]** wherein while dealing with the periodical review and permanent nature of disabilities with respect to disability of FRACTURE LOWER THIRD FEMUR, it has been held by this Tribunal that the disability known well to heal with time, cannot be assessed for life, while possessing no such character of permanent nature.

24. Similarly, with respect to reduced assessment of disability by the consequent Re-survey Medical Boards, we find it essential to record that in a catena of cases but not limited to **Ex AC (U/T) Ram Niwas Ahlawat v. Union of India & Ors. [OA 1136/2017]**, **Ex Hav Kripa Ram v. Union of India & Ors. [OA 879/2016]**, and **Ex Rect Sanjay Kumar v. Union of India & Ors. [OA 1593/2018]**, this Tribunal has clearly taken a view that even if the applicant has been invalided out of service due to invaliding disease,

yet if the disability heals with time, he cannot be held entitled to grant of disability pension for life, with the percentage of disability clearly assessed below the statutory threshold of 20% as mandated by Regulation 173 of Pension Regulations for the Army.

25. Furthermore, noting that a duly constituted Re-Survey Medical Board has opined the disability as "**NIL**" for life, and observing that expert medical view carries significant weight, we find it pertinent to refer to the decision of the Hon'ble Supreme Court in ***Ex CFN Narsingh Yadav v. UoI (Civil Appeal No. 7672 of 2019)***. In the said judgment, the Apex Court settled the position regarding the primacy of Medical Board opinions, holding 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 which may warrant the constitution of the Review Medical Board. The invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the Report of the invaliding Medical Board."***

26. The Hon'ble Supreme Court in ***Secretary, Ministry of Defense and Ors v. A. Damodaran (Dead) through LRs and Others (Civil Appeal No. 5678 of 2009)*** has considered

the issue of primacy of medical opinion in details and has observed as reproduced herein under: -

*“42. Here is also a case where the Medical Board has given its definite opinion that the disease from which the petitioner was suffering was not attributable to or aggravated by military service. It was recorded by the Medical Board that the case is of schizophrenia in a young officer with five years' service manifested in disorder of thought, perception, behaviour and emotional incongruity. Further opinion of the Board is that he had been reviewed by the medical specialist and no physical contributory factor elicited for his psychiatric breakdown. Disablement assessed is 60% (sixty per cent) disability neither attributable to nor aggravated by service.*

*XXX                      XXX                      XXX                      XXX*  
44. Another relevant factor which is required to be noted is that the report of the Medical Board is not under challenge. As has been held by this Court, such opinion of the Medical Board would have the primacy and therefore, it must be held that the learned Single Judge and the Division Bench of the High Court were not justified in allowing the claim of the respondent.”

27. With no ground for us to deviate from the aforesaid findings of the Hon'ble Supreme Court and no reason to alienate the reasoning of this Tribunal in cases discussed above, we are of the considered view that the case of the applicant fails, and is bereft of merits.

28. Before parting, it is pertinent to observe that the reliance placed by the applicant on the judgement of this Tribunal in ***Ex Gnr Rishi Ram v. Union of India & ors.*** [OA

**384/2022]**, and **Ex Nk Om Prakash v. Union of India & Ors. [1928/2018]**, does not help the case of the applicant, as in both the cases, the disabilities of LOW BACK ACHE and the ESSENTIAL HYPERTENSION are permanent in nature, unlike the disability of the applicant in the instant case **SPRAIN (LT) ANKLE (OLD) Y-34**, which is a disability of temporary nature.

29. In view of the aforesaid analysis, we are of the considered opinion that OA is devoid of merit, and is liable to be dismissed.

30. Hence, the OA 2003/2018 is dismissed.

31. No order as to costs.

Pronounced in the open Court on this 17<sup>th</sup> day of December, 2025.

**JUSTICE NANDITA DUBEY**  
**MEMBER (J)**

**MS. RASIKA CHAUBE**  
**MEMBER (A)**

/MF/