

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

OA 831/2022 with MA 1082/2022

Ex Hav Ramesh Chandra ... Applicant

Versus

Union of India & Ors. ...

Respondents

For Applicant : Mr. Bikrama Sah, Advocate

For Respondents : Mr. Kumar Gaurav, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

MA 1082/2022

Counter affidavit has been filed. There being some delay in filing the counter affidavit, this application has been filed seeking condonation of delay. Delay condoned for the reasons explained therein. Counter affidavit is taken on record.

2. MA stands disposed of.

OA 831/2022

3. Invoking the jurisdiction of this Tribunal; under Section 14, of the Armed Forces Tribunal Act, 2007, the

applicant has filed this application and the reliefs claimed in Para 8 read as under:-

(a) To direct the respondents to quash the PCDA(P) Allahabad order G-3/88/236/6/96 dated 27.09.1996 (intimated vide EME Records letter No 14517396F/DP-3/Pen dated 04.03.2022) vide which the disability percentage of the applicant was reduced from 20% to 11-14% by PCDA(P) Allahabad and disability element of the pension was rejected.

(b) To direct the respondents to grant the disability element of pension @ 20% for life instead of for 02 years with effect from date of discharge of the applicant being the nature of disability/injury of permanent nature as there is loss of limb of the applicant in the light of Para 185(c) of Pension Regulation for the Army-1961 (Part-1) and Govt of India Min of Def letter dated 07.02.2001.

(b) To direct the respondents to pay the arrears from the date of retirement i.e. from 01.06.1996 along with interest @ 12% per annum till its payment to the applicant as there is a default by PCDA(P) Allahabad to not grant of disability element by illegally reducing the disability percentage from 20% to 11-14% violating the rules and orders.

(c) Pass any other or such further order or orders as deemed fit to this Hon'ble Tribunal in order to secure the ends of justice in favour of the applicant."

BRIEF FACTS

4. The applicant was enrolled in Indian Army on 29.05.1974 and was discharged from service on 31.05.1996 (A/N) and finally struck off strength from Army (SOS) on 01.06.1996 on fulfilling the conditions of his enrolment under item III(i) of table annexed to Rule 13(3) of Army Rules, 1954. It is stated that on 14.09.1992 when the applicant was posted at Pathankot while performing his official duties, he sustained an injury i.e. **“Traumatic Amputation (Rt) Index Finger”**. The Invalid Medical Board (IMB) held on 26.12.1995 assessed the applicant's disability @ 20% for two years and the same was held as 'attributable to military service'. The disability pension claim of the applicant was rejected by PCDA (P) Allahabad vide letter dated 27.09.1996 which had reduced his disablement from 20% to 11-14% for life with an advice to prefer an appeal against the decision, if he is not satisfied with the above decision, within six months from 27.09.1996. The applicant submitted an appeal dated

06.02.1997 against the rejection of disability pension which was forwarded by the PCDA(P) to the M/o Defence for consideration, which in turn, rejected the appeal vide their letter no.7(1141)/97/D(Pen A&AC) dated 15.02.2000. The decision of competent authority was also communicated to applicant vide EME Records letter dated 09.03.2000. Thereafter, the applicant preferred a Second appeal dated 04.01.2022 for grant of disability element, which was again rejected vide EME Records letter No. 14517396F/DP-3/Pen dated 04.03.2022 stating that the delayed cases/appeals beyond the prescribed years cannot be processed/entertained by IHQ of MoD(Army). Aggrieved of the same, the applicant has filed the present OA on 12.04.2022. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

5. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors.*** [2013 (7) SCC

36], the learned counsel for the applicant submitted that the applicant was enrolled in the Army on 29.05.1974 being hale and hearty having no note of any disability recorded in the service documents of the applicant at the time of entry into the service, and that he served in the Army for more than 22 years and thus, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service.

6. The learned counsel for the applicant submitted that on 14.09.1992, the applicant while greasing the chain of recovery vehicle sustained an injury 'Traumatic Amputation (RT) Index Finger'. The counsel further submitted that the amputation of his right hand index finger is a permanent disability and there is no chance of any improvement in future and the possibility of deterioration of the same cannot be ruled out.

7. The learned counsel for the applicant further submitted that as per Para 185 (C) of the 'Pension

Regulation' for the Army 1961 (Part-1), it is provided as under:-

"In cases where the invaliding disability is loss of limb (s), total loss of sight, loss of one eye, amputation, etc, and where the question of improvement/worsening of its physical condition do not arise, the award shall be sanctioned for life in the first instance itself."(Emphasis added)

8. The applicant also placed reliance on the verdicts of the Hon'ble Supreme Court in the case of ***Ex Sapper Mohinder Singh Vs. Union of India in CA No. 164/1993*** dated 14.01.1993, and also on the order of the AFT, Regional Bench, Lucknow in OA No. 226/2019 titled ***Ex Hav Rajendra Singh Vs. UOI & Ors.*** dated 25.09.2014 in support of his case.

9. Per contra, the learned counsel for the respondents controverted the submissions made by the learned counsel for the applicant and contended that while rejecting the disability element pension claim of the applicant vide letter dated 27.09.1996, the PCDA(P) Allahabad granted liberty to the applicant to prefer an appeal in case he was not

satisfied with the said decision. Thereafter, the applicant filed an appeal dated 06.02.1997. The same was forwarded by the PCDA(P), Allahabad to the M/o Defence for consideration. The said appeal was rejected by the M/o Defence vide letter dated 15.02.2000.

10. It is contended that after a lapse of more than 21 years from the dismissal of appeal against the rejection of disability element of pension by the Govt. of India, M/o Defence the applicant submitted an application dated 30.11.2021 under the RTI Act, 2005 seeking certain documents, which were provided to him vide letter dated 17.12.2021. Thereafter, the applicant had preferred an appeal dated 04.01.2022 for grant of disability element which was replied vide letter dated 04.03.2022 stating that, as per direction of IHQ of MoD(Army) issued vide letter No.ESW,D(Pension/Policy) Note No.3)/-D(Pen/Pol) dated 17.05.2016, the delay cases/appeals (beyond five years) will not be processed/entertained by IHQ of MoD(Army).

11. As such, after careful examination in consultation with the Medical Advisor (Pension) by reviewing the findings of the IMB, the claim for disability pension was rightly rejected by PCDA (P) Allahabad under the powers vested to them by the Ministry of Defence. Thus, the action taken by PCDA (P) Allahabad by rejecting the disability pension to the applicant is just, fair and according to prevalent rules at that time.

ANALYSIS

12. We have heard the learned counsel for the parties and have gone through the records produced before us.

13. It is undisputed fact that applicant at the time of joining the Indian Army on 29.05.1974, was found medically and physically fit. It is also not in dispute that the disability with which the applicant is suffering from is caused due to military service by the IMB. It is on record that the disability of the applicant was assessed as attributable to Military Service @ 20% for two years. It is

seen that the disability pension claim of the applicant was sent to the PCDA (P) Allahabad, which was rejected by them vide letter dated 27.09.1996 as the degree of disablement had been reduced to 11-14% for life by PCDA(P).

14. Now, in this connection, we may refer to the judgment of the Hon'ble Supreme Court in ***Ex Sapper Mohinder Singh Vs. Union of India & Ors. [Civil Appeal No. 104 of 1993]*** decided on 14.01.1993, wherein the Apex Court has observed that without physical medical examination of the patient, the administrative authority/higher formation cannot sit over the opinion of a medical board. The observations made in the judgment in the case of ***Ex Sapper Mohinder Singh (supra)*** being relevant are quoted below:-

"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension or not. In the present case,

it is nowhere stated that the petitioner was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core."

15. Thus, considering the legal aspects emerging out of the aforesaid judgment of the Hon'ble Apex Court, we are of the view that the percentage of the disablement assessed by the IMB held on 26.12.1995 for claiming disability pension was wrongly interfered with by the administrative authority, and is, therefore, unsustainable in law when the IMB had already assessed the disability @ 20%.

16. In so far as the disability of the applicant, which was considered to be of permanent nature, but assessed for a particular period i.e. for two years is concerned, it is important to refer to the judgment of Hon'ble Supreme Court in the case of ***Commander Rakesh Pande Vs. Union of India & Ors.*** [Civil Appeal No. 5970 of 2019] decided on 28.11.2019, wherein the Hon'ble Apex Court while interfering

with the decision of the Armed Forces Tribunal granting disability pension for five years to the applicant, granted the disability for life and observed as under :

“Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual himself requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @ 50% for life.”

[Emphasis supplied]

It is pertinent to mention here that the Tribunal has followed the aforesaid judgment of the Hon'ble Apex Court in numerous cases where the duration of disablement was for a particular period, but still was considered to be for life. The amputation of finger is a permanent disablement and cannot be assessed for a fixed period of time and has to be conceded disablement for life. The disability of the applicant is, therefore, assessed as attributable to Military Service @20% for life.

17. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled for disability element of pension in respect of disability i.e **'Traumatic Amputation (Rt) Index Finger'** @ 20% for life.

18. We, therefore, set aside the reduction of disability percentage at less than 20% by the administrative authority i.e. PCDA (P). Therefore, the applicant is entitled for grant of the disability element of pension.

CONCLUSION

19. In view of the aforesaid judicial pronouncements and parameters, the applicant is entitled for disability element of pension. Therefore, the OA 831/2022 is allowed. The respondents are thus directed to grant disability element of pension to the applicant for the disability of "Traumatic Amputation(Rt) Index Finger"@ 20% w.e.f. 31.05.1996(date of discharge) for life, which be rounded off to 50% for life, in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India Vs. Ram Avtar** (supra).

The amount of arrears, however, is directed to commence to run from a period of three years prior to the institution of the present OA i.e. 12.04.2022 in terms of the verdict of the Hon'ble Supreme Court in **Union of India and others Vs. Tarsem Singh** (2009(1) AISLJ 371).

20. Accordingly, 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, failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

21. No order as to costs.

Pronounced in the open Court on this ^{Hu} 11 day of March, 2025.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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