

COURT NO. 3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 1382/2018

Lt Col Devendra Pratap (Retd.) (IC- 17049M) ... Applicant

Versus

Union of India & Others

.... Respondents

For Applicant : Mr. Ajai Bhalla, Advocate

For Respondents : Mr. Karan Singh Bhati, 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 are read as under:

"8.(a) That the Hon'ble Tribunal may be pleased to direct the respondents to consider disability no. (i) Cervical Spondylosis to be aggravated by military service as found by RMB; and

(b) Further direct the respondents to grant composite disability pension @40% and round off the same by broad banding it to 50% in terms of Hon'ble Supreme Court's judgments in the case of K.J.S Buttar Vs. UOI & Ors. And Union of India vs Ram Avtar w.e.f 01 Sep 2014 i.e. his date of retirement; or;
(c) Impose exemplary cost on the respondents for such inaction on their part."

BRIEF FACTS

2. The applicant was commissioned in the Indian Army on 15.06.1966 in medical category SHAPE-I and was discharged from the service on 31.07.1996 after rendering 33 years of regular service. The Release Medical Board dated 01.06.1996 found the applicant fit to be discharged from service in SHAPE-2 (S1H1A1P2E1) for the disabilities "(i) Cervical Spondylosis @ 20% (Permanent) and (ii) Chronic Duodenal Ulcer @ 20% with composite assessment of the disabilities @ 40% for two years. Both the disabilities "(i) Cervical Spondylosis and (ii) Chronic Duodenal Ulcer were held as aggravated on account of stress and strain in service for two

years. However, at the same time conceded both his disabilities as “neither attributable to nor connected with service”.

3. The initial claim of applicant for grant of disability pension was rejected vide letter dated 02.04.1997 with an advice, that in case the applicant is not satisfied with the decision of the respondents, he may prefer an appeal against the decision within six months of the receipt of the said letter by him.

4. The applicant's first appeal dated 16.11.1997 against the rejection of his claim was adjudicated and rejected by the first appellate committee vide letter dated 20.01.2000. The applicant preferred a second appeal dated 26.10.2017 against the rejection order dated 20.01.2000, however, the same was rejected vide order dated 03.11.2017 on the ground of delay.

5. In the meanwhile, the applicant preferred an application No. 204012/M-5(A) dated 20.01.1998 for conducting Re-survey Medical Board. The OIC Medical Board intimated the applicant vide letter No. 1203/5/RSMB/UA/98 dated 26.08.1998, that AFMSF-17 (Re-survey Medical Board proceedings) in duplicate

along with other connected medical documents are returned herewith unactioned as the individual failed to report to Military Hospital, Meerut within two months from the date of calling of notice issued to him vide letter No. 1203/5/RSMB/CL/98 dated 08.05.1998.

6. The applicant vide letter dated 04.09.1998 (Annexure A-6) informed the respondents that he did not receive any letter from Military Hospital Meerut regarding Resurvey Medical Board nor could get any information in this regard from Medical Board Office. He further requested to convene a Medical Board in Military Hospital Delhi as it was close to his residence which is in Noida, but did not receive any response from the respondents. This statement of the applicant remained uncontroverted in absence of any response from the respondents.

7. Aggrieved by the rejection of his second appeal, the applicant has approached this Tribunal vide the present OA. In the interest of justice, it is considered appropriate to take up the present OA for consideration.

CONTENTIONS OF THE PARTIES

8. Learned counsel for the applicant submitted that prior to the applicant's commissioning, he was subjected to a detailed medical examination and only after been found medically fit and having undergone rigorous training that he was commissioned in the Indian Army and as such there was no note or record with regard to any disability suffered by him at the time of commission.

9. Learned counsel for the applicant submits that in 1978, while serving in 4 Mountain Division Signal Regiment, during his divisional level exercise the applicant met with an accident when his Jonga fell 200 feet down the mountain gorge. Due to the said accident, he suffered severe injuries and was admitted to Military Hospital Pathankot. He met with another car accident in the year 1991 while being posted at Shillong due to which he suffered from grave injuries and had to be admitted in the Military Hospital.

10. Inviting our attention to the rejection letters and the Medical Board proceedings dated 01.06.1996, it is urged that

though the RMB held both the disabilities as aggravated due to stress and strain, however, rejected his claim for grant of disability pension on frivolous grounds.

ANALYSIS

11. We have heard the learned counsel for the parties and have perused the record.

12. It is pertinent to note that no reply was filed by the respondents despite several opportunities; hence the statement of applicant remained uncontroverted.

13. A perusal of Part I of the RMB dated 01.06.1996 reveals that the applicant suffered with disabilities (i) Cervical Spondylosis (721) and (ii) Chronic Duodenal Ulcer with NSAID G1 Bleeding (532, 537), onset of disability in January 1995 and August 1995 respectively. The applicant in Para 4 of the personal statement has mentioned that the said disability was caused/made worse, "due to stress and strain of military service". This claim of applicant is also

corroborated by the Opinion of Medical Board in Part III of RMB, which is reproduced as under :-

“

PART III

OPINION OF THE MEDICAL BOARD

2. (a) In respect of each disability the Medical Board on the evidence before it will express its views as to whether

(i) It is attributable to service during peace or under field service conditions; **NO {Dis-1}**
{Dis-2}

OR

(ii) It has been aggravated thereby and remains so; or **YES {Dis-1}**
{Dis-2}

(iii) It is not connected with service. **Not connected Dis-1 & Dis-2**
(The Board should state fully the reasons in regard to each disability on which the opinion is based.)

| Disability | A | B | C |
|---------------------------------------------------------------------|----|------------|---------------|
| (1) Cervical Spondylosis (721) | NO | YES | Not Connected |
| (2) Chronic Duodenal Ulcer with NSAID induced G1 Bleeding (532,537) | DO | DO | DO |

(c) In respect of each disability shown as aggravated under B, the Board should state fully :

(i) The specific condition and period in service which aggravated the disability;

Disability-1 in Jan 95 and Dis-2 in Aug 95 due to stress and strain.

(ii) Whether the effect of such aggravation still persists. **YES**

(iii) If the answer to (ii) is in the affirmative, whether effect of aggravation will persist for a material period. **YES ”**

14. Further, the percentage of disablement was put forth through the RMB which was duly approved and confirmed by the Approving and Confirming Authorities respectively as under:-

“

| 6. What is present degree of disablement as compared with a healthy person of the same age and sex? (Percentage will be expressed as Nil or as follows) : 1.5%, 6-10%, 11-14%, 15-19% and thereafter in multiples of ten from 20% to 100%. | | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|-------------------------------------------------|-----------------------------------------|
| Disability (as numbered in question 1 in Part II) | Percentage of disablement | Probable duration of this degree of disablement | Composite assessment (all disabilities) |
| (i) Cervical Spondylosis (721) | 20% | 02 years | 40% (Forty percent only) |
| (ii) Chronic Duodenal Ulcer with NSAID induced GI Bleeding | 20% | | |

”

15. Though, Opinion of Lt Col Raman Sahjal, CL. SPL (MED) of MH Ambala Cantt and of R Handa (Lt Col) Graded Spl (Surg. & PAED) dated 31.05.1996, attached to Para II of the

RMB proceedings under the 'statement of case', which reads to the effect :-

“Chronic Duodenal Ulcer NSAID induced G.I. bleeding manifesting as Malaene Aug 93. In medical classification P3(t-24) w.e.f. 31st Oct 93. Also in med cal P2 (Permanents) for Cervical Spondylosis.”,

reveals that the disability (i) Cervical Spondylosis was permanent in nature.

16. From the aforesaid, it is evident that the RMB found both the disabilities of the applicant as aggravated by stress and strain of service and disability (i) Cervical Spondylosis permanent in nature whereas disability (ii) Chronic Duodenal Ulcer (temporary) and assessed the rate at 20% each composite 40%, despite that without any justification his initial claim was rejected vide Government of India, Ministry of Defence letter dated 02.04.1997 on the ground that disability (i) Cervical Spondylosis is neither attributable to nor aggravated by Army service. Whereas regarded disability (ii) Chronic Duodenal Ulcer as attributable but reduced the

percentage of disability from 20% to 11-14% for a period of two years.

17. The Government of India, Ministry of Defence letter No. 2(318)/96/D(Pen-C) dated 02.04.1997 is reproduced as under :-

“ **No. 2(318)/96/D(Pen-C)**
Government of India,
Ministry of Defence,
New Delhi, the 2-4-97

To
The Chief of the Army Staff,
New Delhi.

Subject :- Claim to Disability Pension in respect of Lt. Col. Devendra Pratap (IC-17049 M) (Retd.).

Sir,

I am directed to say that it has been decided that out of the disabilities viz. (i) Cervical Spondylosis and (ii) Chronic Duodenal Ulcer from which the above named officer was found suffering at the time of release from service, disability No. (ii) should be regard as attributable to his military service and the degree of disablement assessed at 11-14% for the period from 1.8.96 (the date of release from service) to 31.5.98 (viz. 2 years from the date on which the Release Medical Board was held).

2. Disability No. (i) is neither attributable to nor aggravated by his Army service. The claimant may, if he so desires, prefer an appeal against the decision taken on the disability within 6 months from the date of receipt of this letter by him. The appeal may be addressed to the Under Secretary D(Pen-A), Room No. 207, A Wing, Sena Bhawan, New Delhi-110011.

3. As the degree of disablement is less than 20% the officer will not be entitled to any disability element of pension.

4. ***This letter issues with the concurrence of the Ministry of Defence (Finance Division) vide their U.O. No. 564/Pen of 1997.***

Yours faithfully,

Sd/-

(N. N. MATHUR)

Under Secretary to the Government of India.”

18. The issue of sanctity of the opinion of the Release Medical Board on its overruling by a higher administrative authority formation is no more Res Integra. The Hon'ble Supreme Court in the case of ***Ex. Sapper Mohinder Singh vs Union of India & Others***, in Civil Appeal No. 164 of 1993, decided on 14.01.1993, which has been followed in large number of cases by the Tribunal, has made it clear that without physical medical examination of a patient, a higher formation/administrative authority cannot overrule the opinion of a Medical Board. The relevant part of the aforesaid judgment is 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 Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. 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.”

19. Therefore, in light of the aforesaid judgment in **Ex Sapper Mohinder Singh** (*supra*) as well as records of the RMB, it is clear that the opinion qua the disabilities Cervical Spondylosis assessed and Chronic Duodenal Ulcer of the RMB cannot be overruled by the administrative authority. Hence, the decision of competent authority is void in law.

20. Subsequently, the Government of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 07.02.2001 regarding modalities for implementation of the recommendations of the fifth central pay commission contained in Paras 164.10 and 164.22 of the report regarding the findings of the Medical

Boards vide Para 7 provides for Re-assessment of Disability as under :-

“7. Re-assessment of Disability:- There will be no periodical reviews by the Resurvey Medical Boards for re-assessment of disabilities. In cases of disabilities adjudicated as being of a permanent nature, the decision once arrived at will be final and for life unless the individual himself requests for a in cases of disabilities which are not of a permanent nature. There will be only one review of the percentage by a Reassessment Medical board to be carried out later, within a specified time frame. The percentage of disability assessed/recommended by the Reassessment Medical Board will be final and for life unless the individual himself ass for a review. The review will be carried out by Review Medical constituted by DGAFMS. The percentage of disability assessed by the Review Medical Board will be final.”

Furthermore, vide Para 10, the provision contained in this letter were made applicable to service personnel who were in service on or after 01.01.1996.

21. 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]

Thus, a person afflicted with diseases which are permanent in nature is entitled to disability pension for life which cannot be restricted for a period of time and the assessment/ percentage of disability as made by the Medical Board has to be treated for life.

CONCLUSION

22. In the present case the RMB found both the disabilities (i) Cervical Spondylosis and (ii) Chronic Duodenal Ulcer aggravated by military service and assessed at 20% each with composite assessment as 40%. The disability (i) Cervical Spondylosis was permanent in nature. The applicant retired

posted 01.01.1996, hence, in view of the aforesaid judicial pronouncements, the Government of India letter dated 07.02.2001 and the parameters referred to hereinabove, the applicant is entitled for disability element of pension for life in respect of disabilities of (i) Cervical Spondylosis. Though, the applicant has not made any prayer with regard to grant of disability pension with regard to disability (ii) Chronic Duodenal Ulcer, but as record indicates the same was assessed @20% (temporary) for two years, hence in the interest of justice, disability (ii), Chronic Duodenal Ulcer, the applicant is entitled for the disability element of pension with broadbanding for **two years only**. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 20% in respect of ID (i) Cervical Spondylosis for life rounded off to 50% and for ID (ii) **Chronic Duodenal Ulcer @20% for two years**, composite 50% 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 Through Its Secretary & Ors. vs. Sgt Girish**

Kumar & Ors. etc. (Civil Appeal No. 6820-6824 of 2018) and
Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012),
decided on 10.12.2014.

23. The respondents are thus directed to accordingly 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 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.

Pronounced in the open Court on this 18th day of March,
2026.


[RASIKA CHAUBE]
MEMBER (A)


[JUSTICE NANDITA DUBEY]
MEMBER (J)

/Yogita/