

OA 2090 of 2013 Sushil Kumar Vs UOI & Ors.

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL  
BENCH AT CHANDIMANDIR**

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OA 2090 of 2013

<b>Sushil Kumar</b>	.....	<b>Petitioner(s)</b>
<b>Vs</b>		
<b>Union of India and others</b>	.....	<b>Respondent(s)</b>

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For the Petitioner (s) :	Mr Surinder Sheoran, Advocate
For the Respondent(s) :	Mr KK Bheniwala CGC

**CORAM:**

**HON'BLE MR JUSTICE BANSI LAL BHAT, MEMBER (J)**  
**HON'BLE LT GEN SANJIV CHACHRA, MEMBER (A)**

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**ORDER**  
**10.08.2017**

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This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, praying for issuance of directions to the respondents for quashing the impugned letter dated 19.10.1996, 19.01.2010 and letter dated 20.02.2013 (Annexure A-3, A-7 and A-8 respectively) vide which the respondents rejected the claim of computing disability element @ 50% against 15 to 19% disability to the applicant w.e.f. 01.01.1996.

2. Brief facts of the case are that the applicant was enrolled in the Army wef 18.09.1982 and invalided out from service on 17.05.1984, after rendering 01 year 07 months and 29 days service, on medical ground in Low Medical Category EEE (Permanent) on the recommendations of the Invaliding Medical Board held at the time of invalidation for the disability "RHEUMATOID ARTHRITIS".

3. The applicant was initially granted disability element of the disability pension consisting service element and disability element against 20% disability wef 18.05.1984 to 13.03.1986 vide PPO No.

D/C/237/85 and the same was continued from 14.03.1986 to 06.02.1996 vide PPO No. D/PA/9040/86 (Annexure A-1).

4. That on the recommendation of the Re-survey Medical Board, held on 20.03.1996, the disability of the applicant was assessed @ 15-19% for ten years (Annexure A-2). Respondent No. 4 vide letter dated 19.10.1996 (Annexure A-3), discontinued the disability w.e.f. 20.03.1996 for five years and since then the applicant is getting service element of pension.

5. The applicant vide representation dated 20.02.2013 requested the respondent No. 4 for release of disability element @ 50% w.e.f. 01.01.1996 as per computing benefits. However, respondent No. 4 vide letter dated 20.02.2013 (Annexure A-8) intimated that as per their records the applicant did not report for Re-survey Medical Board (RSMB) on the due date i.e. 25 March, 2001 and resultantly the medical documents had been returned by MH Ambala Cantt as unactioned. .

6. That although the applicant has not received any intimation for RSMB, however, his disability has already been accepted @ 15 to 19% by the RSMB held on 20.03.1996 for ten years.

7. On issue of notice, the respondents filed their written statement and stated that as the applicant was enrolled in the Army on 18 Sep 1982, as recruit and was invalided out from service on 17 May 1984 before completion of service tenure under item III (iii) of the Table annexed to Rule 13 (3) of Army Rule 1954 having been downgraded to medical

OA 2090 of 2013 Sushil Kumar Vs UOI & Ors.

category 'EEE' by the Invaliding Medical Board held on 14 March, 1984 and the Medical Board was approved by ADMS Maharashtra and Gujrat

Area on 29 March, 1984 as a case of RHEUMATOID ARTHRITIS 714

(a). The disability of the applicant was graded as aggravated by military service due to stress and strain of service condition with 15-19% disability for two years by the Invaliding Medical Board on 14 March, 1984 (Annexure R-5) but the Adjudicating Medical Authority at PCDA (P) Allahabad accepted the percentage of disability as 20% and sanctioned disability element from 18 May 1984 which continued upto 19.03.1996. Intimation vide letter, dated 19.10.1996 (Annexure R-4), regarding discontinuation of disability element was conveyed to the applicant but the applicant neither appealed nor appeared before the RSMB. Now, after a gap of more than 17 years, without giving any legal notice to the respondents, the applicant has filed the present application, in the Hon'ble Armed Force Tribunal for continuation of disability pension and rounding off benefits thereon w.e.f. 01.01.1996. The applicant failed to exhaust the remedies from time to time and now approaching judiciary without even serving a legal notice, hence, the OA deserves dismissal.

8. We have heard both the learned counsel and perused the record.

9. From the facts of the case, given above in brief, the following salient points of this case are noticed:-

(a) *The applicant is a pre-01.01.1996 invalidated-out ex-Army personnel;*

OA 2090 of 2013 Sushil Kumar Vs UOI & Ors.

- (b) *The disability of the applicant has been assessed by a duly constituted Medical Board as 15 to 19% i.e. less than 20% as required under statutory regulation 173 of the Pension Regulations for the Army, 1961 for which reason his claim for disability pension stands rejected by the respondents. However, the PCDA(P) accepted his disability as 20% for 10 years valid upto 13.03.1986; and*
- (c) *Onset of the said disease is in November 1983 at Aurungabad i.e. after more than one year of his enrolment in the Army admittedly aggravated to military service due to stress and strain of service conditions and did not suffer any disability before joining Armed Forces.*

10. The issue in question posed herein, therefore, is whether keeping in mind the above facts and circumstances of the case, can a disability pension that has been granted to a petitioner on his invalidment from service on medical grounds aggravated by military service be discontinued subsequently, due to an RSMB now holding his disability to be below the stipulated 20%.

11. The same issue came up before this Tribunal in **OA No. 621 of 2014, Bharat Kumar vs. Union of India & others**, decided along with two other connected cases [(i) **OA No.1235 of 2014**, titled **Hoshiar Singh vs. UOI & Ors** and (ii) **OA No.480 of 2015**, titled **Jasbir Singh vs. Union of India and others**] by order dated **19.09.2016** in which the applicants sought grant of disability pension in the facts and

circumstances that they were also pre-01.01.1996 retirees whose services were cut-short by invaliding them out of service on account of disability held to be constitutional in nature, not attributable to or aggravated by military service and the degree of disablement was assessed as less than 20%.

12. On detailed adjudication of the above said cases on the issue involved in the case in hand, as well as the issues relating to delay and laches in preferring the claim as also cut-off date of 01.01.1996, the applicability of the renowned *Dharamvir Singh's and Ram Avtar's cases*, the applicants therein were held entitled to disability pension and in cases where the disability was assessed by the Medical Board for two years only, the arrears were ordered to be restricted to two years prior to the filing of the O.A. with a further direction to hold an RSMB to assess the future disability within a fixed time frame.

13. In passing the above order, the Bench took note of an earlier order of this Tribunal, dated **26.03.2015** in **O.A. No 2146 of 2012, Balwinder Singh Vs UOI and Others** in which the following opinion was expressed:-

*“Based on above, we are of the opinion that since the petitioner was invalided out from service in low medical category, his disability should be at least 20% as against 11 to 14% disability assessed by the invaliding Medical Board”.*

14. In taking such a view, reliance was placed on the judgment of the Hon'ble Supreme Court in **Civil Appeal No 5605 of 2010, Sukhwinder Singh Vs UOI and Others**, decided on **25.06.2014** in Paragraph 9 whereof the following observations were made:-

*“Fourthly, whenever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above 20%. Fifthly, as per the extant Rules/ Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”*

15. From the facts of the present case it is amply clear that the applicant was invalided out from service and his disability was assessed by the IMB as 20% aggravated by military service and accordingly granted disability pension by the PCDA(P) upto 06.02.1996 (Annexure A-1). However, subsequently the RSMB downgraded the disability to below 20% (15-19%) and thus discontinued his disability pension. Admittedly, he continued to get his service element of pension. Therefore, taking a similar view to that expressed in the above cases, we can take a view that the petitioner's medical status after his invalidment with 20% disability aggravated by military service, cannot be brought below 20% and denied a disability pension. We are fortified in this view that the instant case is fully covered by the ratio of the judgment of the Coordinate Bench of the Tribunal in *Bharat Kumar's case (supra)*. We rather are of the view that the instant case is on a better footing inasmuch as the disability of the applicant herein has been opined by the Invaliding

**OA 2090 of 2013 Sushil Kumar Vs UOI & Ors.**

Medical Board as attributable to military service at 20% at the time of invalidment, whereas, in the cases, referred to above, the disability of the applicants was held to be neither attributable to, nor aggravated by military service.

16. Therefore, applying the above settled principle of law in the facts and circumstances of this case, we find and hold that the petitioner is entitled for continuation of his disability pension @ 15-19% (deemed 20%) and rounded off to 50% w.e.f. 01.01.1996 for life. However, since the petitioner has come after a gap of 17 years, his arrears will be restricted to 3 years from the date of his filing this petition. The offending part of impugned letters dated 19.10.1996, 19.01.2010 and 20.02.2013 (Annexures A-3, A-7 and A-8 respectively) are held arbitrary and accordingly set aside for this case.

17. Accordingly, the present petition is allowed with a direction to the respondents to grant disability pension to the applicant @ 15-19% (deemed 20%) and rounded off to 50% w.e.f. 01.01.1996 for life, and, thereby, by obtaining the requisite Government sanction and/or issuance of the PPO in this regard be issued and arrears accrued to the applicant be released within a period of four months from the date of receipt of certified copy of this order by the respondents. Failure to comply with this order within the stipulated period shall entitle the applicant to interest @ 8% from the date of this order. However, the arrears in this regard are restricted to three years preceding the date of filing of the present petition i.e. 18.04.2013 since there is a considerable delay in filing the present petition.

18. The O.A. is allowed in the above terms, however, with no order as to costs.

**(Sanjiv Chachra)**  
**Member (A)**

**(Bansi Lal Bhat)**  
**Member (J)**

10.08.2017  
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Whether the judgment for reference to be put on internet – Yes/ No