

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

-.-

MA 1329 of 2014 and OA 2462 of 2012

Avtar Singh **Petitioner(s)**
Vs

Union of India and others **Respondent(s)**

-.-

For the Petitioner (s) : Lt Col (Retd) SN Sharma, Advocate
For the Respondent(s) : Smt. Geeta Singhwal, Sr.PC alongwith
Maj Williamjeet Singh, OIC AFT Legal
Cell

CORAM:

HON'BLE MR JUSTICE BANSI LAL BHAT, MEMBER (J)

HON'BLE LT GEN SANJIV CHACHRA, MEMBER (A)

-.-

ORDER
25.05.2017

-.-

MA 1329 of 2014:

Replication is taken on record.

The MA stands disposed of.

By means of this O.A., the applicant has prayed that the orders impugned therein, whereby the claim of the applicant for disability pension stands rejected, may be quashed and set aside with a direction to the respondents to grant disability pension to him together with the benefit of rounding-off, with a further direction to hold a Re-survey Medical Board (RSMB) for assessing his present disability percentage, *inter alia*, passing any other order or direction the Tribunal may deem fit in the facts and circumstances of the case.

The case of the applicant in nutshell is that he was enrolled in the Indian Army on 30.07.1980 and was invalided out from service on and w.e.f. 30.07.1981 in Low Medical Category (LMC) 'EEE' with 11-14% disability due to "**EPIGASTRIC HERNIA**", declared as aggravated due to stress and strain of military service.

In view of the above, no disability pension was granted to the applicant despite making representations, preferring Appeals and serving

a Legal Notice upon the respondents, which stand rejected as per impugned orders, Annexures A-3, A-4, A-7, A-9 & A-11. Hence the present O.A. for the relief(s), mentioned hereinabove.

On notice, the respondents have contested the O.A. by filing a written statement. It is asserted therein that the case of the applicant for grant of disability pension was rejected by the PCDA(P), Allahabad, on the ground that though the disability suffered by him was held by the IMB as aggravated by military service, but, the degree of disablement was opined to be less than 20% for two years only, as per AFMSF-16 (Annexure R-1).

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

During the course of arguments, the learned counsel for the applicant clarified that initially, as per AFMSF-16 (Annexure A-2), the disability of the applicant was assessed as 11 to 14% for two years only, but, as per Re-Survey Medical Board proceedings AFMSF-17 (Annexure A-5), the disability of the applicant was assessed as 11 to 19% (permanent). Accordingly, the relief, as prayed for in the O.A. deserves to be granted to the applicant for life.

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 invalided-out ex-Army personnel; and,*
- (b) *The disability of the applicant has been assessed by a duly constituted Medical Board as 11 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.*

The question posed herein, therefore, is whether in the above facts and circumstances of the case, disability pension can be granted to the applicant, or not.

The same issue came up before this Tribunal in **OA No.621 of 20014, 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%.

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.

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”.

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.”

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 RSMB as 11-19% (permanent), opined to be attributable to military service. Therefore, taking a view similar to that expressed in the above cases, the disability of the applicant herein is to be deemed more than 20%, to be rounded off to 50%. We, thus, take a 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 Medical Board as aggravated by military service, whereas, in the cases, referred to above, the disability of the applicants was held to be neither attributable to, nor aggravated by military service.

We, thus, find that the issue involved in this case is no longer *res integra* and this O.A. can be disposed of in the same and similar terms, given in *Bharat Kumar's case (supra)*.

We, therefore, quash and set aside the impugned orders with a direction to the respondents to grant disability pension to the applicant @ 11-19% (deemed 20%) from the date to discharge up to 31.12.1995 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, release the arrears accrued to the applicant within a period of three 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, till actual payment thereof.

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)

25.05.2017
bss