

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

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OA 2584 of 2013

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

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:	Petitioner in person.
For the Respondent(s) :	Mr.Suveer Sheokand, CGC for Mr. Anil Khurana, CGC.

**Coram: Justice Vinod Kumar Ahuja, Judicial Member.  
Air Marshal (Retd) SC Mukul, Administrative Member.**

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**ORDER  
09.12.2013**

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By this petition the petitioner prays for the following reliefs:

(a) Directions to the respondents to release the disability pension of the petitioner by re-examining his claim in view of issuance of letter dated 29.09.2009 (Annexure A-11) vide which voluntary retirees have been made eligible for grant of disability pension and the cut-off date of 01.01.2006 mentioned in which has already been struck-down vide Annexure A-9.

(b) With a further prayer that the petitioner may be directed to be granted 'ex-serviceman' status as per the judgment of the Guwahati Bench of this Tribunal vide Annexure A-12.

2. As per the averments of the petitioner, he was commissioned in the regular Army on 17.12.1988 and took premature retirement and later on changed to resignation of commission on 10.08.1993 on compassionate grounds. While attending the PT course on 29.11.1990, the petitioner sustained an injury i.e. 'fracture base of 5<sup>th</sup> metatarsal', which initially healed but kept giving problems to him throughout his service thereafter. Though his medical category was downgraded initially it was again upgraded and at the time of release he was admittedly in SHAPE-I. Soon after his release, the petitioner requested the respondents to re-conduct his medical examination since the disability was troubling him in his day today routine under the

provision to evaluate post-discharge claims for disabilities as per Rule 10 of the Entitlement Rules, 1982. The respondents, however, refused to look into the request of the petitioner since it was stated that persons who retired at their own request were not eligible for disability pension in accordance with then existing Regulation 50 of the Pension Regulations. However, on 29.9.2009, the bar on grant of disability pension to premature and voluntary retirees was lifted and such similarly placed individual were also entitled to disability pension. Initially the said stipulation was made applicable only to those who had retired after 1.1.2006 but the said cut-off date was later quashed by the Principal Bench entitling all voluntary retirees irrespective of date of retirement for grant of disability pension. The petitioner's request thus needs to be re-examined in terms of the said policy decision of the respondents under these extra-ordinary circumstances although he had crossed the 10 years period mentioned in Rule 10 because due to gray area in the policy his claim was not examined during the relevant period. The petitioner is willing to face Medical Board to prove his disability which was incurred in service and declared attributable, still subsists and is causing discomfort in his day to day activities. The petitioner hence prays for examination of his post-discharge claim for disability pension under special circumstances emanating from the issuance of the Government of India letter dated 29.09.2009. Finding no response to his appeal dtd 23.08.2011 the petitioner has put in the petition.

3. The respondents in their written reply bring out that the petitioner was granted commission on 17<sup>th</sup> Dec. 1988 and was prematurely retired from service on 8<sup>th</sup> Aug 1993. The officer sustained injury 'fracture base of 5<sup>th</sup> ring metatarsal (RT)' severe in nature and was placed in low medical category SHAP1E1 (T4) w.e.f. 15<sup>th</sup> December, 1990 to 27 Jan 1991. The injury of the petitioner was classified as attributable to Military Service in peace area. As per AFMSF-18 dated 08 July 1993, the petitioner was released in Medical Category SHAPE-I. Being a pre-2006 premature retirement case his disability pension claim was not processed as per para 50 of Pension Regulation for the Army 1961, Part-I. The Release Medical Board dated 8<sup>th</sup> July 1993 was conducted in the MI Room of 286 Med Regt

and the AFMSF-18 has been duly signed by the petitioner himself. The petitioner was declared fit. The petitioner has sought disability element with benefit of rounding off. However, it may be noted that as per Government of India, Ministry of Defence letter No. 16(5)/2008/S(Pen/Policy) dated 29<sup>th</sup> September, 2009, officer proceeded on premature retirement on or after 1<sup>st</sup> January, 2006 only are eligible for disability pension subject to eligibility conditions. The petitioner proceeded on premature retirement<sup>4</sup> w.e.f. 9<sup>th</sup> August, 1993, hence, he was not entitled for disability element of disability pension.

4. In the replication the learned counsel for the petitioner submitted that the respondents admit the injury to be attributable to military service, also admit to not holding of any competent Release Medical Board at a military hospital. As per respondents Form AFMSF-18 was filled in the Unit MI room at the time of release of the applicant from service. The respondents have denied the disability pension claim since the petitioner retired prematurely and that too pre-1.1.2006, he was not entitled to disability pension. On the judgment of the Hon'ble Principal Bench in **Rajesh Kumar Bhardwaj's case** wherein this cut-off date i.e. 1.1.2006 has been quashed, the respondents bring out that it is under challenge before the Apex Court, therefore, till decision comes, the case be adjourned sine die. Whereas the Apex Court has already decided the above issue about the principle in the judgment given in Rajesh Kumar Bhardwaj's case while deciding Civil Appeal No. 9827 of 2011 "Union of India v. J.K.Kaushik decided on 3.7.2013. The respondents admit that the injury sustained is attributable to service. Even after upgradation to SHAPE-I, the injury was persisting and for that respondents do not deny Annexure A-4. The respondents have not produced a copy of AFMSF-18 on record.

5. We have heard the learned counsel for the parties and gone through the record of the case.

6. From the record it is clear that the petitioner was commissioned in the regular Army on 17.12.1988. During training on 29.11.1990, while doing PT the petitioner sustained injury on his right foot. Duly constituted medical board temporarily lowered the category A-4(T) due injury FRACTURE BASE OF 5<sup>TH</sup> METATARSAL (RT).

He was upgraded to Shape-1 by medical board held at CH Chandimandir on 28.01.1991.

In 1992, after not being granted pre-mature release, the petitioner opted for resignation from service. This was accepted and he was released from service vide MS Branch letter 38177/462/MS PR dated 11.05.1993 (page 22 of the paper book). This reads as under:

38177/462/167/MS  
11.05.1993

MS Branch  
Army HQ  
DHQ PO New Delhi -11  
PR

RESIGNATION : IC-48329 A/CAPT SANDEEP BANSAL. ARTY

1. Reference letter No 307501/152/A dtd 21 Dec 1992.
2. The request of above mentioned for resignation from the Army has been approved by the Government.
3. The officer will be informed immediately. He will be relieved of his duties and struck off strength as early as possible, but not later than 90 days from the date of issue of this letter. 286 Med Regt will forward a copy of Part –II in the format of IAFF-3010 (in duplicate) notifying the details of the period of leave for which cash payment is allowed, date of SOS and permanent home address to this HQ (MS Branch / Premature Retirement), Zila Sainik Board and to all concerned.
4. No disciplinary judicial or quasi[judicial proceedings are pending against the officer. The provisions of Regulation 16(b) of the Pension Regulations for the Army, Part 1, 1961 are not attracted in this case. In case the officer is involved in any disciplinary / quasi-judicial / judicial proceedings or gets involved in any such proceedings subsequent to the issue of these orders, the matter will be reported immediately to this HQ under intimation to CDA(P) Allahabad.
5. Attention is invited to
  - (a) Min of Def letter No 90054/PR/AG/PS 2(b)/3941/D(AG)dtd 12 Jun 86 as amended vide their letter No f.14(3)/88/D/AG-B dtd 26 Mar 92 regarding encashment of annual leave.
  - (b) AO 209/76 for instructions to be complied with when officers proceed on retirement.
  - (c) AO 3/89 regarding medical examination before retirement.

Sd/-  
(Surdarshan Kaur)  
Senior Civilian Staff Officer  
For Col MS

7. Copy of the Part – II Orders, as envisaged at para 3 of above letter, has been attached at page 24 of the paper book.

8. First coming to the question of eligibility for service pension, we find that the petitioner had not completed minimum qualifying service for granting pension as per the provisions of Regulation 16(b) of the Pension Regulations for the Army, Part 1, 1961. However, the petitioner would be eligible for grant of disability pension, if admissible.

9. Next coming to grant of disability pension, we find that as per AO 3/89 the medical examination before retirement was done. Copy of the Medical Examination Report AFMSF-18 (Release/ Discharge) of the petitioner before his retirement in July 1993 was not available during the hearing of the case, however, this was made available subsequently. The detailed report of AFMSF-18 brings out the following:-

At page 3 under “**Upper Limb and Locomotor System**” reads

UPPER LIMB AND LOCOMOTOR SYSTEM  
 Upper Limbs (Fingers, hands, Wrists elbows, shoulder, girdles cervical and dorsal vertebra) **NAD** (Nothing abnormal detected)  
 LOCOMOTION (Hallux Valgus / rigidus, flat feet, joints, pelvis, lumber and sacral vertebrae, coobyx, varicose veins) **NAD** (Nothing Abnormal Detected)

At page 4

(Final Observation, findings and recommendations of the Medical Officer, Medical Category and date of last medical board present medical category are to be specifically mentioned.) If a disability is discovered the individual will be brought before a Medical Board and necessary form for Invaliding / Categorisation medical board complied.

Fit to be released in S1H1A1P1

Sd/-  
 (GP Shindare) Maj(AMC)  
 RMO  
 286 Med Regt

10. From above it is clear that before release from service, the medical examination of the petitioner was correctly carried out and he was released in medial category S1H1A1P1. Since there was no disability, further actions, in the form of Invaliding / Categorisation medical board were not necessary. Thus, we find that since the petitioner was released in Shape-1, he was not eligible for grant of disability pension.

11. Coming to the question of injury suffered by the petitioner on his right foot on 29.11.1990 while doing PT, duly constituted medical board temporarily lowered the category A-4(T) due to injury FRACTURE BASE OF 5<sup>TH</sup> METATARSAL (RT). He was upgraded to Shape-1 by medical board held at CH Chandimandir on 28.01.1991. However, at Appx 4 (page 20 of the paper book), a slip dated 30.01.1991, showing recurrence of the injury sustained by the petitioner has been appended. There are no further inputs with respect to the injury, although the petitioner claims to have been suffering from its effects. During medical examination done in July 1993, before release, as per AFMSF-18, he was found fully fit.

12. Coming to the question of conduct of a fresh medical board we find that in his Notice for Demand of Justice dated 10.11.2001, as per the record available on file, the petitioner after voluntary retirement from the service, took up the case with the authorities for grant of disability pension as he suffered the first injury which was wholly attributable to the military service and the second injury of 30.11.1993 which was aggravated and was as a result of first injury. No reply was received from the authorities. At para 19 of the letter it is brought out that the disability pension and other retrial benefits are granted to all persons who are discharged from service and the injury manifests within ten years from then as mentioned in Rule 10 of the Entitlement Rules. Therefore the action of the authorities in denying the similar benefit to the petitioner is wholly discriminatory and violative of Article 14 and 16 of Constitution of India. Then at last para it is brought out that if his redressal of grant of disability pension and Ex Serviceman status is not attended to within 30 days, he would approach appropriate court of law for grant of redressal. We find that no further action was taken by the petitioner on not being replied till he put up representation dated 23.08.2012 requesting re-conduct of medical examination since the disability which occurred in Army service is troubling him in his day to day routine. The bar on grant of disability pension to pre-mature and voluntary retirees had been lifted with the issuance of policy letter dated 29.09.2009 and even the cut-off date of 01.01.2006 had been struck down by the judgment of the Principal Bench of the Tribunal in case of Ramesh Bhardwaj. Therefore his request needs to be re-examined under these extraordinary circumstances, although he had crossed 10 years period mentioned in Rule 10 of the Entitlement Rules as due to grey area in the policy his case was not examined during the relevant period it was supposed to be examined and now since issuance of policy letter dtd 29.09.2009 he is eligible for consideration. That he is willing to face any medical board to prove that the disability which occurred in service and declared attributable, still subsists and is causing him discomfort in his day to day activities. The relevant regulations are as under:

*\*Disability Pension When Admissible*

48.(a) Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an officer who is invalidated out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty cases and is assessed at 20 percent or more.

(b) The question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II.

*\*Service element of disability Pension is being notified on permanent basis w.e.f. 1/1/73 and even if at some stage the percentage of disability of the pensioners, goes below 20% his service element notified initially, continues to remain in force for life of the pensioners. However in the case of pre 1/1/73 disability pensioners, the service element is contingent upon the continuance of disability element unless and until the pensioner has put in minimum of 10 years of service before 1/3/68 and 5 years of service since after that date up to 31/12/72, after which the service element becomes permanent feature as explained above.*

[Auth.-CDA (P4), Meerut No Tech/014-I DT 6/5/921

(b) The Entitlement Rules for casualty pensionary awards, 1982 at para 10 reads:-

**APPENDIX II**  
(Referred to in Regulations 48, 173 & 185)

**ENTITLEMENT RULES FOR CASUALTY PENSIONARY AWARDS, 1982**

(Promulgated vide Ministry of Defence letter No.1 (1)/81/Pen-C, dated 22.11.1983, as amended vide Corrigendum No. 1(1)/81/Pen-C dated 21st August, 1984).

**POST DISCHARGE CLAIMS**

10. Cases in which a disease did not actually lead to the member's discharge from service but arose within 10 years thereafter, may be recognised as attributable to service if it can be established medically that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge and that if the disability had been manifest at the time of discharge the individual would have been invalidated out of service on this account.

Manifestation of a disability after an individual is retired/discharged from service is governed by following guidelines

***Manifestation of a disability after an individual is retired/discharged from service***

*178. An individual who is retired/discharged from Service, otherwise than at his own request, with a pension or gratuity, but who, within a period of ten years from the date of retirement/discharge, is found to be suffering from a disease which is accepted as attributable to his military service may, at the discretion of the competent authority, be granted, in addition to his pension/gratuity, a disability element at the rate appropriate to the accepted degree of disablement and the rank last held, with effect from such date as may be decided upon in the circumstances of the case.*

**Note:** The individual claiming the benefit under the provision of Regulation 178 above will send an application the CCDA (P) through the Record office concerned requesting to be brought before a medical board. On receipt of the application and the relevant documents, CCDA (P) will decide, where necessary, in consultation with the Medical Adviser (Pensions) attached to his office, whether a prima-facie justification for bringing the claimant before a medical board exists or not. If it is decided to bring the individual before a medical board the CCDA (P) will request the record officer concerned to arrange for a medical board in the normal manner, and forward the proceedings of the medical board to the CCDA (P) for further necessary action

Thus we find that the injury suffered by the petitioner in the year 1990, attributable to the military service, was healed and the petitioner was released in shape-1 at the time of his release from service in 1993. The injury manifested subsequently in 1993 and was treated at civil hospital, however it could not be taken up as the petitioner had taken pre-mature discharge at own request. While the petitioner did take up the matter in year 2001, there was no response from the authorities. With the changed policy issued by the respondents in year 2009, the petitioner became eligible for being considered for review and took up the case in the year 2012.

13. In light of above, we find that the petitioner needs to be medically examined by Resurvey Medical Board to ascertain the manifestation of his injury to his right foot (FRACTURE BASE OF 5<sup>TH</sup> METATARSAL (RT) on 29.11.1990 while doing PT, post retirement and its extent for further actions if warranted.

14. The current controversy in respect of the petitioner as far as the Ex-Serviceman status is concerned, is squarely covered by the judgment of the Armed Forces Tribunal, Regional Bench of Guwahati rendered on 15<sup>th</sup> July, 2011 in case **Ex-Maj Prasanta Kumar Sinha v. Union of India (TA No. 27 of 2010** arising out of Writ Petition © No. 3133/2004) wherein the petitioner has been held entitled to the grant of Ex-Serviceman status.

15. Thus, the petition is partly allowed and the petitioner is granted the status of Ex-Serviceman and shall also be subjected to medical re-examination.

**(Justice Vinod Kumar Ahuja)**

**(Air Marshal (Retd) SC Mukul)**

09.12.2013

raghav

Whether the judgment for reference is to be put on internet? Yes / No..