

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

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OA 2162 of 2013

Ram Chand	Petitioner(s)
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s) :	Mr Surinder Sheoran , Advocate
For the Respondent(s) :	Mr. Rajesh Sehgal, CGC.

**Coram: Justice Vinod Kumar Ahuja, Judicial Member.
Lt Gen (Retd) HS Panag, Administrative Member.**

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**ORDER
07.10.2013**

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The petitioner has filed this application under Section 14 of the Armed Forces Tribunal Act, 2007 seeking the following relief/directions:-

- (i) Directions to the respondents to release the service element of disability pension to the petitioner w.e.f. 24.5.1969 for life with 18% annual interest till payment which has not been released wilfully
- (ii) Directions to the respondents to carry out RSMB of the petitioner continuation of disability element of disability pension w.e.f. 24.5.1969.
- (iii) Issue any other appropriate order or direction which this Hon'ble Bench may deem fit and proper under the circumstances of this application.

Brief facts of the case are that the petitioner joined the Army Service w.e.f. 11-02-1958. During tenure of his service, he served at various places. He was invalided out of service w.e.f. 14-09-1968 on medical grounds after completion of 9 years and 216 days of service. His claim for grant of disability pension was forwarded to CDA (P), Allahabad by the competent authority for final adjudication. The CDA (P), Allahabad vide PPO No. D/65/68 had released the disability pension consisting of service element and disability element @ 60% in favour of the petitioner for a period of two years from 15-09-1967 to 23-05-1969 on account of disability – “**Multiple Penalcalculus**”.

The petitioner was due for Re-survey Medical Board on 24-05-1969 for continuation of disability pension. As per averment in the application, his disability pension was discontinued by the Authorities on 24-05-1969 without

conducting any Re-survey Medical Board. Thereafter he made several representations to the authorities for continuation of disability pension. On 30-09-1996 he received a letter (Annexure A-2) from respondent No. 4 ,wherein it was certified that the individual was discharged from service on medical grounds due to “**Multiple Penalcalculus**” on 14 September 1967 (A.N) under Army Rule 13 III (iii). His disability was accepted as aggravated by service and the percentage of disability accepted by CDA (P), Allahabad , was 60% for two years. It is further certified therein that the individual was in receipt of disability pension of Rs. 37/- per month w.e.f. 15th September to 23 May 1969. Thereafter he made several representations to the authorities to continue the disability pension, but of no avail. Even the legal notice dated 14-02-2013 did not serve any purpose.

Faced with the situation, he filed the present application with the prayer that if he is not entitled to disability pension under paragraph 173 of Pension Regulations for the Army, he is entitled to service element of disability pension under Regulation 186 of Pension Regulations for the Army, 1961 w.e.f. 01-01-1973 in view of the Policy Instructions issued by the Govt of India, Ministry of Defence through letter dated 23-02-2012(Annexure A-6) and the various decisions of Hon’ble Supreme Court as well as this Bench.

On notice having been issued, the reply has been filed on behalf of the respondents, wherein it has been admitted that the petitioner was enrolled in the Army (Corps of Signals) on 11-02- 1958 and was invalided out of service w.e.f. 14-09-1967 under Rule 13 (3) III (iii) of Army Rules, 1954 for the disability -**Multiple Penalcalculus** after rendering only 09 years and 16 days of service. The Invaliding Medical Board of the petitioner was held on 24 May 1967. He was found to suffer from the aforesaid disability which was held as aggravated by military service and the percentage of disability was assessed at 15% to 19% as per Medical Board Proceedings (Annexure R-1). It is further admitted that the PCDA (P), Allahabad had granted disability pension to the petitioner for a period of two years from 15-09-1967 to 23-05-1969 at 60% disability vide PPO No. D/66/68 dated 8-01-1968.

The categorical stand of the respondents in the reply is that initially the petitioner was granted disability pension for two years from 15-09-1967 to 23-05-1969. His next Re-survey Medical Board was due on 24-05-1969. Before expiry of two years, all relevant medical documents were sent to Military Hospital, Pathankot vide letter No. P/6273999 dated 18 March 1969. However, the petitioner failed to appear before Re-Survey Medical Board despite a call up letter having been issued by the Military Hospital, Pathankot vide letter No. 109/10/STATS dated 25-03-1969. Thereafter despite issuing of several reminders, to the petitioner, he failed to appear before the Re-survey Medical Board. Therefore, the disability pension was discontinued w.e.f. 24-05-1969.

It is also the stand of the respondents that as per Regulation 173 of Pension Regulations for the Army, 1961 (Part-1) disability pension is granted to an individual, who is invalided out of service in low medical category and his disability is viewed as attributable to or aggravated by military service and the percentage of disability is assessed at 20% or above. As per Medical Board which was held on 24-05-1967, the petitioner's disability was assessed as less than 20% being 15 to 19%. As such he was not entitled to get disability pension after the expiry of the period of two years and the same was rightly discontinued w.e.f. 24-05-1969 by the competent authority.

We have heard the learned counsel for the petitioner as well as the respondents and have also gone through the documents placed on record.

Admittedly, the petitioner was invalided out of service w.e.f. 14-09-1967 after having put in more than nine years of service. Initially he was granted disability pension by the CDA (P), Allahabad for a period of two years from 15 September 1967 to 23 May, 1969 which was discontinued w.e.f. 24-05-1969 as he failed to appear before the Re-Survey Medical Board despite repeated reminders. As per the Invaliding Medical Proceedings dated 24-05-1967, his disability was found at 15 to 19% though it was held as aggravated by military service. In the course of hearing, the sole argument of the learned counsel for the petitioner was that now it is a settled principle of law that if an individual is not entitled for disability pension, his disability being less than 20%, then he is entitled to service element as per provision of para 186 of Pension Regulations for the Army, 1961 as this Bench has already granted this relief in number of cases.

The learned counsel for the parties also agree that the controversy involved in the present case is squarely covered by the judgment of the Principal Bench dated 2nd April 2012 in **OA No. 640 of 2010 " Ex.SWR Dalip Singh vs Union of India and others"**, wherein the Principal Bench has observed as under:-

"In view of above order of the Government dated 23-02-2012 and order of Hon'ble Supreme Court dated 23-02-2012, the petitioner is entitled for service element of disability pension w.e.f. 01-01-1973. Arrears may be worked out and same may be paid to the petitioner with interest @ 12% per annum. This exercise will be

completed as far as possible within a period of three months from the date of his order.”

In view of the above, the present petition is allowed and the petitioner, who stood invalidated out of service prior to 1973, is entitled for service element w.e.f. 01-01-1973.

The respondents are directed to calculate and pay the amount as per the judgment of Hon'ble Supreme Court in **Special Leave to Appeal (Civil) No. 20868 of 2009 Union of India Vs Sinchetty Satyanaran** with connected SLPs as well as the in terms of the letter dated 29th February 2012 of Additional Directorate Gen Personnel Services Adjutant General's Branch Integrated HQ of Mo.D (Army) DHQ PO NEW DELHI.

The amount so arrived at shall be paid within a period of four months from today. If the amount is not paid within the stipulated time, then the petitioner will be entitled to interest @ 12% per annum on the principal amount till actual payment.

(Justice Vinod Kumar Ahuja)

(Lt Gen (Retd) HS Panag)

07 .10.2013

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Whether the judgment for reference to be put on Internet -- Yes/No