

**IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI.**

O.A. 71 OF 2016.

No. 4359123K
Ex-NK(TS) Liamsuankhup Zou,
Vill Zomy Colony, Churachandpur,
P.O. Churachandpur,
Dist. Churachandpur, Manipur.

.....**Applicant.**
By legal practitioners
for Applicant.
Mrs. Rita Devi,
Mr. AR Tahbildar.

-Versus-

1. Union of India
Rep. by the Secretary,
Ministry of Defence,
Sena Bhawan, New Delhi-1.
2. Records The Assam Regiment,
PIN (ARMY) 900332,
C/o 99 APO.
3. Additional Directorate General,
Personnel Services, PS-4(d),
Adjutant General's Branch,
IHQ of MOD (Army), DHQ, P.O. New Delhi.
4. The Principal Controller of Defence Accouts (Pension),
Allahabad, Pin- 211014, Uttar Pradesh.

.....**Respondents**
By legal practitioners
for Respondents.
Mr. Chandra Barua, **CGSC.**

PRESENT

HON`BLE MR. JUSTICE B.P.KATAKEY, MEMBER (J)
HON`BLE VICE ADMIRAL MP MURALIDHARAN, MEMBER (A)

ORDER
22.3.2017

(By B.P.Katakey,J.)

The applicant, who was enrolled in the Indian Army on 28.10.1987 and was subsequently discharged on 31.8.2004 under Rule 13(3)(III)(iv) read with Rule 13(2)(a) of the Army Rules, after rendering 16 years 10 months 3 days of service, has filed this application challenging the decision of the

PCDA(P) dated 11.10.2004 and also the subsequent order dated 18.6.2016 passed by the Senior Record Officer for OIC Records, Assam Regiment, whereby and whereunder the claim of the applicant has been rejected on the ground that the disability from which the applicant was found to have suffered at the time of discharge was neither attributable nor aggravated by military service.

2. We have heard Mr. AR Tahbildar, learned Counsel for the applicant and Mr. Chandra Barua, learned Central Govt. Standing Counsel assisted by Col Anand, OIC, Legal Cell, Guwahati appearing for the respondents.

3. Learned Counsel appearing for the applicant referring to the RMB proceeding dated 17th June, 2004 has submitted that it is apparent therefrom that the disability, namely, Idiopathic Nephrotic Syndrome, from which the applicant was found to have suffered at the time of discharge was found to be 30% for life and attributable to and aggravated by military service, the PCDA(P) has rejected the said opinion of the expert Board vide order dated 11.10.2004 by holding that the disability was neither attributable to nor aggravated by military service and that too, without assigning any reason thereof. Learned Counsel, therefore, submits that the decision of the PCDA (P) dated 11.10.2004 and also the Senior Record Officer for OIC Records dated 18.6.2016, based on the decision of the PCDA (P), needs to be interferred with and a direction may be issued to the respondent authorities to grant the disability element of the pension to the applicant @ 30%, which may be rounded off to 50% in view of the order dated 10.12.2014 passed in Civil Appeal No. 418/2012 by the Hon`ble Supreme Court in Union

of India & Ors. Vs. Ram Avtar with arrears for a period of 3 (three) years and interests thereof.

4. Learned Counsel appearing for the repondents, on the other hand, referring to the averments made in the counter affidavit filed, has submitted that though the Release Medical Board has certified that the applicant's disability of 30% was attributable to and aggravated by military service, the same, however, has not been accepted by the PCDA (P), which is evident from the order dated 11.10.2004, as the PCDA(P) has found that the disability was neither attributable to nor aggravated by military service. That being the position, the applicant is not entitled to the relief claimed, submits the learned Counsel.

5. The arguments advanced by the learned Counsel for the parties received our due consideration. It is evident from the RMB proceeding dated 17th June, 2004 that the applicant was found to have suffered from the disability of Idiopathic Nephrotic Syndrome, percentage of which was found to be 30% for life. Such disability, according to the RMB, was aggravated by service. The opinion of the RMB was approved and accepted by the approving authority. The PCDA(P), however, without any reason has interfered with the said expert opinion relating to the aggravation and vide order dated 11.12.2004 has rejected the claim of the applicant for grant of disability element of the pension on the ground that the disability was neither attributable to nor aggravated by military service. The Supreme Court has held that the PCDA has no authority to overrule the expert opinion rendered by the RMB. The Records also rejected the claim of the applicant

vide order dated 18th June, 2016 as the PCDA(P) vide order dated 11.12.2004 has rejected such claim.

6. That being the position, the impugned orders dated 11.10.2004 and 18.6.16 are set aside being not sustainable in law.

7. The applicant shall be entitled to the disability element of the pension @ 30% for life, which is rounded off to 50%, in view of the order passed by the Hon`ble Supreme Court in Ram Avtar (Supra). The arrear, however, would be paid for a period of 3 years preceding the date of filing of the O.A. The arrear would carry interest @ 9% per annum from the said date, and to be paid within 4 (four) months from the date of receipt of a copy of this order.

8. O.A. is accordingly allowed, as indicated above.

9. No costs.

10. Leave to appeal.

MEMBER (A)

MEMBER (J)

Nath.