

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

OA-39/2017

Ex-Hav Hitesh Ch Bezbaruah

.....Applicant.

By legal practitioners
for Applicant.

**Mrs. Rita Devi,
Mr. AR Tahbildar.**

-Versus-

- 1. The Union of India,
Represented by the Secretary,
Ministry of Defence,
Sena Bhawan, New Delhi- 1.**

- 2. The Signals Records,
Post Bag No. 5,
Jabalpur – 482001.**

- 3. The 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 Accounts (Pension),
Allahabad, Pin 211014, Uttar Pradesh.**

....Respondents

By legal practitioners
for Respondents.

Mr. N.Baruah, CGSC.

PRESENT

HON'BLE DR. (MRS) JUSTICE INDIRA SHAH, MEMBER (J)

HON'BLE LT GEN C.A.KRISHNAN, MEMBER (A)

ORDER

23.02.2018

Per Lt Gen C.A. Krishnan, Member(A)

The Original Application has been filed by Ex-Hav Hitesh Bezbaruah seeking disability pension with the benefit of rounding off.

2. The applicant submits that he was enrolled in the Indian Army on 13.01.1984 and was discharged with effect from 30.4.2003 under Rule 13(3)(iii) of the Army Rule, 1954 after rendering more than 19 years of service. The applicant who was in low medical category P3(P) at the time of discharge for disability "MYASTHENIA GRAVIS (Stage II) "was assessed by the Release Medical Board to have disability at 40% for life which was considered as aggravated due to stress and strain of military service. While the applicant was granted service pension, no disability pension was granted to him.

3. Learned Counsel for the applicant submitted that at the time of enrolment in the Army, the applicant was physically and mentally fit and on completion of his training he was posted to various Units in field and peace areas. While working in Counter insurgency areas in Jammu & Kashmir as part of Rastriya Rifles, the applicant suffered from "MYASTHENIA GRAVIS (Stage II)" due to stress and strain of service and was placed in low medical category. Due to his being placed in permanent low medical category, subsequently he was discharged from service with effect from 30.4.2003. Although the Invaliding Medical Board documents are not available, as per the applicant's statement and also from the fact revealed from the Disability Pension First claim opening sheet of the PCDA(P) Allahanad (Annexure-D) it can be discerned that the Medical Board had declared that the individual's disability had aggravated due to stress and strain of service.

However, the applicant's claim for disability pension was adjudicated and rejected by the PCDA(P) Allahabad stating that the disability "MYASTHENIA GRAVIS (Stage II)" was neither attributable to nor aggravated by military service and that it was constitutional in nature. The applicant preferred an appeal which was rejected by the respondents stating that the disability was neither attributable nor aggravated by the military service vide their letter P/14254319/DP-2/NER dated 24.11.2003 (Annexure-D). Learned Counsel for the applicant also submitted that since the applicant was found fit physically and mentally at the time of his joining the service, any subsequent disability should be held as attributable to or aggravated by military service in accordance with the principles enunciated by the Hon'ble Apex Court judgment dated 02.7.2013 in Dharamvir Singh Vs. UOI & Ors. (2013) 7 SCC 316. The PCDA(P) Allahabad without proper deliberation and without conducting any medical examination could not have declared that the disability of the applicant was not attributable to nor aggravated by the military service. Learned Counsel for the applicant, therefore, prayed that the applicant be granted disability pension with the benefit of rounding off.

4. The learned Counsel for the respondents submitted that even though the Release Medical Board held that the disability was aggravated due to stress and strain of military service, it was rejected by the PCDA(P) Allahabad while adjudicating the claim. The applicant who was advised to prefer an appeal within six months did not do so within the stipulated time. The respondents, however, did not dispute the fact that the issue is a covered matter.

5. Heard the rival submissions and perused the records.

6. It is not disputed that the applicant was discharged from service and the Release Medical Board assessed him to have disability due to "MYASTHENIA GRAVIS (Stage II)" which was held as aggravated by military service and was assessed at 40 percent for life.

7. Regulation 173 of the Pension Regulation for the Army, 1961 provides for grant of disability pension and reads as follows:

"173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 percent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the Rule in Appendix II".

8. The Regulation specified the condition for grant of disability, namely, disability is to be 20 percent and should be attributable to or aggravated by military service. It has been further specified that the attributability or aggravation is to be decided under the rules at Appendix II of Entitlement Rules for Casualty Pensionary Award, 1982 of which Rule 5, 9, 14 are relevant in deciding the issue. As per Rule 5, a member is presumed to have been in sound physical and mental state upon entering service except as to physical disability noted or recorded at the time of entrance. In the event of subsequently being discharged from service on medical ground, any deterioration which has taken place is due to service. While under Rule 9 the claimant shall not be called upon to prove the condition of entitlement, Rule 14 specifies that rules to be observed in respect of disease to decide the aggravation of disability.

9. The above Rules were looked into by the Hon'ble Apex Court in its order dated 13.02.2015 in Union of India & Anrs. Vs. Rajbir Singh, Civil Appeal No. 2904 of 2011, during which the Apex Court also recalled the decision in Dharamvir Singh (Supra) and held as follows:

"15.....The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance of service, the Medical Board must state the reasons for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces".

10. The disability of the applicant, namely, "MYASTHENIA GRAVIS (Stage II)" was considered by the Release Medical Board as aggravated by service and assessed at 40 percent for life. Therefore, in our view, without giving sufficient justification, the findings of the Release Medical Board could not have been overruled by the PCDA(P) Allahabad that too without examining the applicant, by merely stating that the disability was neither attributable to nor aggravated by service and was constitutional in nature.

11. In our view, therefore, based on the principles enunciated by the Hon`ble Apex Court in Rajbir Singh (Supra), the applicant was eligible for disability pension at 40 percent at the time of discharge from service and also entitled to the benefits of broad banding.

12. In view of the forgoing, the Original Application is allowed and the respondents are directed to sanction and pay disability pension at 40% to the applicant from the date of discharge. The respondents are further directed to extend the benefit of rounding off of the disability pension to 50% to the applicant. The monetary benefits of arrears of disability element of pension as also rounding off, will, however, be restricted to a period of 3 (three) years preceding 21 July 2017, i.e. the date of filing of the OA in accordance with our orders dated 20.2.2018 in MA No. 33/2017 while condoning the delay in filing the O.A. The respondents are further directed to pay the arrears as indicated above to the applicant within three months from the date of receipt of a copy of this order, failing which the unpaid amount will carry simple interest @ 9% per annum.

13. The OA is disposed of. There would be no order as to costs.

14. Learned Counsel appearing for the respondents has made an oral prayer to grant leave to appeal to Hon`ble Supreme Court under Section 31 of the AFT Act, 2007. Since the order does not involve any point of law having general public importance, the prayer for leave to appeal to the Hon`ble Supreme Court stands rejected.

MEMBER(A)

MEMBER(J)

Nath