

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

OA- 11 of 2018

PRESENT

HON`BLE DR. (MRS) JUSTICE INDIRA SHAH, MEMBER (J)  
HON`BLE LT GEN GAUTAM MOORTHY, MEMBER (A)

No.04358277F  
Ex-Hav/CLK Dimbeswar Borah  
S/o Late Ratna Kanta Borah  
Vill- Birah Bebejia,  
P.O-Senchowa  
Dist-Nagaon, Assam

..... Applicant

By legal practitioners for  
Applicant.

**Mrs. Rita Devi**  
**Mr. A.R.Tahbildar**

-VERSUS-

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

..... Respondents

By Legal Practitioner for the  
Respondents  
**Mr. N. Baruah, CGSC**

Date of Hearing : 11.05.2018  
Date of Order : 11.05.2018

## ORDER

(Per Lt. Gen Gautam Moorthy, Member (A))

This application has been filed under Section 14 & 15 of the Armed Forces Tribunal Act, 2007, by which the applicant has challenged the rejection of disability pension claim by PCDA (P).

1. The case in brief is that the applicant was enrolled in the Indian Army as Sepoy on 16.11.1984 and was discharged from service in medical ground on 31.08.2002 as indicated in the Discharge Book. However, the Medical Board Proceedings state "*Release not solely on medical ground. Fit to be released in LMC S1H1A1P2E1 (both disabilities)*".

2. The disability of **Hypertension** was considered to be aggravated by military service while that of **Obesity** was not considered to be attributable to or aggravated by military service by the Release Medical Board.

3. The medical report also shows the disability as Primary Hypertension which was due to stress and strain in military service and to the effect of persistence of such aggravations, the report answered in the affirmative and that aggravation will persist for a material period (of time). The percentage of disablement had been noted as 30% for Primary Hypertension and 1-5% for Obesity (composite 30%), probable duration of this degree of disablement for 2 years.

4. The applicant submits that he had expressed his willingness to continue in service and had applied for sheltered appointment, but was not recommended and therefore, he was not retained in service. The applicant forwarded his claim for disability pension to PCDA (P) through Assam Regiment Records. But the PCDA (P) vide their letter No.G-3/70/194/1102 dated 31.02.2002

rejected the claim by Medical Advisor (Pension) without assigning any reason whatsoever. The same was forwarded to the applicant by Assam Regiment Records vide their letter dated 31.02.2003. He subsequently preferred an application on 10.05.2017 to The Records, The Assam Regiment who once again confirmed that the first claim for disability element of pension was rejected by PCDA (P) and this was communicated to him by the Records vide their letter as noted above. Thereafter, it was stated by the Records that the applicant could not prefer any further appeal against rejection to the Appellate Committee of First Appeal (ACFA) as his case was time barred.

5. Heard Mr. AR Tahbildar, learned counsel appearing for the applicant and Mr. N. Baruah, learned CGSC assisted Capt Akash Vashishta, OIC, Legal Cell, AFT, Guwahati appearing for the respondents.

6. We do not find any necessity to ask the respondents to file affidavit in opposition since the issue of denial of pension by MAP, PCDA(P) overruling the Medical Board recommendations has been settled once for all in view of a catena of judgments in this regard.

7. Vide letter No. B/39022/Misc/AG/PS-4(L)/BC dated 25.04.2011, the AG's Branch has advised all Commands to withdraw from cases where alteration in the findings of the Medical Release Board has been made by MAP without having physically examined the individual. The said letter is set out as under –

*"1. It may be recalled that the institution of MAP in PCDA(P) has now been abolished since 2004. Till such time it was invoked, all med opinions of the IMB/RMB that were recd in PCDA(P) for claims were adjudicated by the MAP (Medical Advisor Pensions) who were considered the final authority to decide on final admissibility of disability pension.*

2. *These alterations in the findings of IMB/RMB by MAP(PCDA(P) ) without having physically examined the indl, do not stand to the scrutiny of law and in numerous judgements. Hon<sup>ble</sup> Supreme Court has ruled that the Medical Bd which has physically examined should be given due weightage, value and credence.*

3. *It is being noticed that despite a settled legal posn such cases are still being contested on behalf of the UOI, which is infructuous and causes undue financial losses to both petitioner as well as the UOI.*

4. *All Command HQs are requested to instruct all Record Offices under their Comd to withdraw unconditionally from such cases, notwithstanding the stage they may have reached and such files be processed for sanction.*

5. *Record Offices will ensure that only such cases are withdrawn where :-*

(a) *Subsequent Appeal Medical Boards have not been held and initial findings of RMB/IMB have assessed disability/disabilities to be attributable-or aggravated / or connected with service.*

(b) *If subsequently, consequent to a Court Order or otherwise on indl 's request any Appeal Medical Board which has physically examined the individual, has been held and they too have confirmed the alteration by MAP(PCDA(P) ) as NANA or any other assessment which disallows disability pension to an indl, such cases will not be withdrawn.*

6. *All Record Offices are directed to unconditionally withdraw from all such cases which fulfil the criteria as mentioned in para 5 above."*

8. Although the initial disability was noted for a period of two years, the applicant should have been called for Re-Survey Medical Board after the aforesaid period of two years and his category reassessed. But, this was not done and the legitimate claim of the applicant for disability element of disability pension was incorrectly denied to him by PCDA (P). This fulfils the condition laid down in para 5(a) of the AG's Branch letter quoted above.

9. Therefore, we are of the opinion that the applicant be granted disability element of disability pension at 20% rounding off the same to 50% from the date of his discharge from service. The arrears are to be calculated and paid to him within a period of three months from the date of receipt of this order, failing which simple interest @8% per annum will be levied on the arrears.

10. OA is accordingly disposed of.
11. No Costs.
12. After pronouncement of the judgment, Mr. N Baruah, learned CGSC appearing for the respondents made an oral prayer for grant of leave to appeal to the 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)**

*Kalita*