

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

OA 33/2018

P R E S E N T

**HON'BLE DR. (MRS) JUSTICE INDIRA SHAH, MEMBER (J)
HON'BLE LT GEN C.A. KRISHNAN, MEMBER (A)**

**JC-380220N
Ex Nb Sub Biswajit Sutradhar
Vill-Kashipur, Mission Road,
P.O. Reshsmbagan, Dist-West Tripura,
State-Tripura,
Pin-799008**

..... **Applicant**

Legal practitioner for the applicant
Mr. A.R.Tahbildar

- Versus -

1. Union of India,
Represented by the Secretary
Ministry of Defence,
Sena Bhawan,
New Delhi-11
2. The Records Signals
PIN-908770,
C/O-56 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 (Pensions),
Allahabad, Pin-211014, Uttar Pradesh.

..... **Respondents**

Legal practitioner for the
Respondents
Mr. B. Kumar, CGSC

Date of Hearing : 06.06.2019

Date of Judgment & Order : 07.06.2019

ORDER

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

1. The applicant has filed this application under Sections 14 and 15 of the AFT Act, 2007 praying : -

(i) To Quash and set aside the impugned order dated 29.11.2016 issued vide No.B/38046A/32/2016/AG/PS-4 (2nd Appeal) by the Dy Dir, AG/PS-4 (2nd Appeal) for Adjutant General rejecting the applicants claim for disability pension.

(ii) To Direct the respondents to grant disability pension along with rounding of benefit from 20 % to 50 % to the applicant from the date of his discharge, i.e., 01.03.2013 with arrear and interest thereon.

(iii) To grant any other relief Honourable Tribunal may deem fit and proper in the interest of justice.

2. The brief facts of the case are that the applicant bearing No. JC-380220N was enrolled as a Signalmán in the Indian Army on 31.12.1986 after subjecting him to through medical examination and finding him physically and mentally fit. However, after rendering 10 years of service in SHAPE-1, the applicant suffered from disease-Primary Hypothyroidism (E-02) in October 1996 and was discharged from service on 01.06.2008 in Low Medical Category P2(P) with 20 % disability for life holding the same to be aggravated by military service by the Release Medical Board dated 08.02.2008 (Annexure-A). Pursuant to his discharge from service the authorities issued Original PPO NO.S/032737/2008 and Disability Element PPO NO.DE/023419/2008 respectively to the applicant. Applicant's discharge order was withdrawn by the authorities in terms of the order dated 19.01.2009 issued by the Senior Records Officer and was re-instated in active service on 16.03.2009 with all consequential benefits including continuity in service, seniority and pay, pursuant to the Judgment and Order passed by the Honourable Delhi High Court and Honourable Supreme Court of India in its order dated 07.11.2008 in C.A. No.6857/2008

in Union of India & Others Vs. Rajpal Singh, holding that Army personnel with Low Medical Category (Permanent), who have completed 15 years of service, cannot be discharged from service under Army Rule 13 (3) item iii(v) read with Sub Rule 2 A of the Army Rule, 1954, without holding Invaliding Medical Board. After reinstatement, the applicant served till completion of his terms of engagement. On being discharged after completion of his terms of engagement, the applicant was subjected to Release Medical Board held at Military Hospital, Jabalpur in June, 2012 wherein his disability (Primary Hypothyroidism-E02) was assessed @ 20 % for life, but this time the Medical Board held the applicant's disability due to 'Primary Hyperthyroidism', to be neither attributable to nor aggravated by Military Service (Annexure-C) and he was discharged from service on 01.01.2013 in Low Medical Category P2 Permanent. Hence he has filed his OA praying for granting disability pension and broadbanding benefits. The learned Counsel for the applicant submits that the applicant exhausted all the remedies available before approaching this Hon'ble Tribunal and seeks relief(s) as prayed for in the OA.

3. The learned Counsel for the respondents while not disputing the applicant's service particulars and the findings of the Medical Boards submits that the applicant's appeal for grant of benefit of broadbanding was rightly rejected as the final Release Medical Board held in June, 2012 observed that the disability of the applicant is neither attributable to nor aggravated by the Military service and prayed for dismissal of the OA .

4. Heard the learned Counsel appearing for the applicant and the learned CGSC appearing for the respondents and perused the documents placed on record.

5. It is not disputed that the applicant was enrolled in the Indian Army on 31.12.1986 and was finally discharged from service on

01.01.2013 in Low Medical Category P2 Permanent. The Invaliding Medical Board held in June, 2012 assessed his disability (Primary Hypothyroidism-E02) @ 20 % and assessed it neither attributable to nor aggravated by the Military service. We find a glaring inconsistency in this as the earlier Release Medical Board held on 08.02.2008 had declared the same Invaliding Disease, i.e., 'Hypothyroidism E02' to be aggravated by service due to "adverse service conditions during Military Service".

6. In the final Release Medical Board proceedings of the applicant dated June 2012, we find no reasoned opinion given by the Medical Board giving out reasons for contradicting the earlier Release Medical Board finding and arriving at the conclusion that the applicant's Invaliding Disease is neither attributable to nor aggravated by the Military Service. A mere conclusion without giving any reason that too when another Medical Board held earlier had opined to the contrary, seems totally illogical.

7. We also find that the Honourable Apex Court in Union of India Vs. Rajbir Singh – Civil Appeal No.2904 of 2011 decided on 13.02.2015 after considering Dharamvir Singh case (supra) and upholding the decision of the Tribunal granting disability pension to the claimants

observed :

"6. xxx xxx xxx... The only question that arises in the above backdrop is whether the disability which each one of the respondents suffered was attributable to or aggravated by military service. The Medical Board has rejected the claim for disability pension only on the ground that the disability was not attributable to or aggravated by military service. Whether or not the opinion is in itself sufficient to deny to the respondents the disability pension claimed by them is the only question falling for our determination. Several decisions of this Court have in the past examined similar questions in almost similar fact situations.".....

"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 members of the armed forces could not have been detected prior to 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 disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with the service. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the Army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension."

8. In the light of the above facts, we find that the applicant is entitled to disability pension with disability element of pension @ 20 %. We also find no difficulty in granting broadbanding benefits to the applicant in the light of the ruling of the Honourable Supreme Court dated 10.12.2014 in Union of India Vs Ram Avtar, Civil Appeal No.418 of 2012 and connected cases, and the orders rendered by various Benches of the Armed Forces Tribunal in similar cases. Considering the above facts, we find that the applicant is entitled to disability pension and also entitled to rounding off his disability element of pension from 20% to 50 %. Arrears will, however, be restricted to three years prior to filing of this OA (Date of filing of the OA-04.12.2018) in

consonance with the Honourable Supreme Court's order in ***Union of India and others v. Tarsem Singh, (2008) 8 SCC 648.***

9. Accordingly, the OA stand disposed of, with a direction to the respondents to issue corrigendum PPO and also to pay arrears of disability element of pension to the applicant with effect from 04.12.2015, as ordered herein, within **three months** from the date of receipt of this order. In case, the aforesaid order is not complied with within the stipulated period, the arrears shall carry 8% interest p.a.

(LT GEN C A KRISHNAN)
MEMBER(A)

(Dr.(Mrs) Justice I.Shah)
MEMBER (J)