

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

OA - 47 of 2017

PRESENT

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

No.JC-548915M Ex-Nb Sub
Zamchinlam Simte
Vill-Simveng
PO-Churachandpur
Dist-Churachandpur, Manipur

..... Applicant

By legal practitioners for
Applicant.

Mrs. Rita Devi
Mr. A.R.Tahbildar

-VERSUS-

1. **The Union of India through**
the Secretary, Ministry of Defence,
New Delhi-11.
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, PO-New Delhi
4. **The Principal Controller of Defence,**
Accounts (Pension), Allahabad
PIN-211014, Uttar Pradesh.

..... Respondents

By Legal Practitioner for the
Respondents

Mr. C. Baruah,

Date of Hearing : 06.03.2019
Date of Judgment & order: 07.03.2019

JUDGMENT & ORDER

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

1. This is an application filed under Section 14 & 15 of the AFT Act, 2007 praying for disability pension. The applicant on his discharge was placed in Low Medical Category H2(P) by the Release Medical Board held on 06.08.2005 assessing the degree of disability 10-14% for life.

2. Heard Mr. AR Tahbildar, learned counsel appearing for the applicant and Mr. C. Baruah, learned counsel assisted by Capt Akash Vashishta, OIC AFT Legal Cell appearing for the respondents.

3. The disability of the applicant was classified as neither attributable nor aggravated by military service and also not connected with military service as opined by the Release Medical Board held on 06.08.2005

4. The applicant being preferred the appeal to the First Appellate Committee, the same was not decided by the Committee and thereafter he filed OA-11 of 2017 which was disposed of vide our order dated 21.03.2017 directing the First Appellate Authority to decide the first appeal and communicate the same to the applicant. On 24.08.2017, the authority rejected the first appeal stating that the Release Medical Board has assessed his disability @ 11-14% which is less than 20% and hence the applicant was not entitled for disability pension. He was also informed that if he is not satisfied with the decision of the Committee, he may prefer Second Appeal to the Second Appellate Committee within a period of 6 months.

5. Subsequently, he filed this OA on 18.11.2017 seeking relief as prayed for in the earlier OA.

6. After exchange of affidavits and hearing both sides, this Bench on 12.09.2018 had ruled that the applicant be brought before Re-survey Medical Board to assess his disability. The Medical Board was also directed to comment on the degree of his disablement.

7. The Re-survey Medical Board proceedings is produced and perused. The Re-survey Medical Board was conducted on 20.09.2018 and under Assessment of disablement, the disablement of the applicant was noted "Sensori Neural Hearing Loss (Bilateral)" and net assessment was still 11-14% for a period of two years. The Board has also stated that the condition of the applicant had neither improved nor deteriorated since the last Board and opined that the condition was 'Static Condition'.

8. Regulation 173 of Pension Regulations for the Army, 1961 relates to the primary conditions for the grant of disability pension and reads as follows:-

Regulation 173. Unless otherwise specifically provided, a disability pension consisting of service element and disability element may be granted to an individual who is invalidated out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.

9. In view of above, it is clear that since the applicant was not invalidated out of service on account of his disablement which is neither attributable nor aggravated to military service and since he has been once again assessed at less than 20% i.e. 11-14% on 26.10.2018 by the Re-survey Medical Board, no disability pension can be allowed to the applicant. Accordingly, the prayer for disability pension of the applicant stands rejected.

10. This OA is accordingly dismissed.

11. No costs.

MEMBER (A)

MEMBER (J)

Kalita