

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

OA - 51 of 2017

PRESENT

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

No. 4338851N Ex-Sep
Thangzuala Lushai
Vill-Khawpubung
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,
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
Integrated HQ 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, CGSC.

Date of Hearing : 11.07.2018
Date of Judgment & order: 11.07.2018

JUDGMENT & ORDER

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

1. This application has been filed under Section 14 & 15 of the AFT Act, 2007 assailing discontinuation of disability pension after paying it for nine years i.e. from 1968 to 1979.
2. The facts of the case are that the applicant was enrolled in the Indian Army on 18.12.1962 and was invalided out from service on 15.09.1968 under Army Rule 13(3) III (iii) after rendering 5 years 8 months and 28 days of service on medical grounds. The applicant was discharged in Low Medical Category EEE (P) by the Invaliding Medical Board vide Proceedings (AFMSF-16) dated 16.07.1968 for "PULMONARY TUBERCULOSIS (002)" for one year with 100% disability. Thereafter, Re-Survey Medical Boards were held on 31.07.1969 and 08.06.1971.
3. Heard Mr. AR Tahbildar, learned counsel appearing for the applicant and Mr. C. Baruah, learned CGSC assisted by Capt Akash Vashishta, OIC Legal Cell, AFT, Guwahati appearing for the respondents.
4. The case of the applicant is that after being granted disability pension consisting of disability element and service element, it was all of a sudden discontinued w.e.f. 01.06.1979. The applicant then took up the matter with the Ex-Servicemen Pension Grievance Cell and was informed that the disability element of pension was discontinued w.e.f. 01.06.1979 as it was assessed at less than 20% by the PCDA (P) Allahabad. The applicant submitted his First Appeal to the Chairman, Appellate Committee of First Appeal on 06.04.2017 which was rejected vide AG's Branch letter No. B/40502/misc./2017/AG/PS-4 (Imp-II) dated 01.09.2017 on the grounds that the claim was more than four years old and hence was not tenable.
5. The respondents have accepted the fact that the applicant was granted disability pension consisting of service element and disability element upto 30.05.1973 and thereafter only service element for life. The respondents have stated that this was communicated to the applicant vide Records Assam Regiment letter No. 3103/433851/42/Pen dated

14.08.1971 and he was asked to appear before the Re-Survey Medical Board to re-assess disability on or before 30.05.1973. But the applicant had failed to do so and subsequently on 04 Sep 1990 he had sent an application regarding revision of disability pension.

6. The Records office, Assam Regiment vide letter of even No. Dated 27.02.1987 intimated the applicant that he had been granted temporary disability pension upto 30.05.1973 only and thereafter, he was required to appear before the Re-Survey Medical Board. He was further advised to obtain medical certificate from a Registered Medical Practitioner and forward the same to the Records Office, Assam Regiment to enable them to arrange and hold Re-Survey Medical Board. This was held on 03.10.1989 in 151 Base Hospital after which he was again placed in the same medical category for further two years with 40% disability as assessed vide Medical Board Proceeding dated 27.10.1989. However, the disability pension claim which was sent to PCDA (P) was returned by them vide their letter No. G3/RA/11/89/121328/IV dated 22.02.1990 on the plea that the disability pension of the applicant had been discontinued w.e.f. 01.06.1979 as the disability was re-assessed less than 20% for life (6-10%).

7. Here it is observed that there is yet another case where the disability claim had been arbitrarily and unilaterally re-assessed and turned down by PCDA (P) without any explanation whatsoever. There are a catena of judgments on the aspect of turning down of disability claim by PCDA (P), Allahabad. Primarily in **"Sukhvinder Singh v. Union of India & Ors" (2014)14 SCC 364**, the Hon'ble Supreme Court has held-

"11. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the armed forces; any other conclusion would tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the armed forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appear to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty percent and seems to us to be logically so. Fourthly, wherever a member of the armed forces is invalided out of service, it performe has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."

8. There is no doubt that the applicant was invalided out from service after 5 years, 8 months and 28 days of service. Paras 173 & 173(A) of Pension Regulation of the Army 1961, Part I, read as follows-

"173- Primary conditions for the grant of disability pension-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 a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over.

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

173(A) - Individuals discharged on account of their being permanently in low medical category - Individuals who are placed in a lower medical category (other than 'E') permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative employment are discharged before completion of their engagement, shall be deemed to have been invalided from service for the purpose of the Entitlement Rules laid down in Appendix II to these Regulations."

9. We find no reason for PCDA (P) to reverse the opinion of the Re-Survey Medical Board held on 03.10.1989 in 151 Base Hospital for the reasons mentioned in paragraph 6(*supra*). In this connection, the following decisions highlighting the over-reach of the PCDA(P) Allahabad are appended below :

"Ram Kumar Singh vs. Union of India, Rajasthan High Court Jaipur, SB Civil WP No. 4904 of 1997 Role of CCDA(P)

The petitioner was enrolled in Army in Regt of Artillery on 19 Jan 1960 and actually fought INDO PAK wars in 1965 and 1971 and was awarded 8 medals including Samar Seva Star and Paschim Star. On 30 Sep 1965 he sustained injury to his right eye due to splinter by air attack from enemy shelling. He was placed in medical category 'CEE' permanent for 'Medical degeneration right eye'. He was discharged from service on 1 Jun 1978 on his own request on compassionate grounds after completion of 18 years 4 months and 130 days service. The medical board recorded his disability as attributable to service in war zone and assessed as 30% for two years but the recommendations of the medical board were not accepted by Chief Controller of Defence Accounts (Pension) and disability pension claim rejected on the ground that his disability was not attributable to military service. On appeal the President of India decided the disability to be attributable to military service in war zone but the CCDA(P) arbitrarily reduced the disability from 30% recommended by the medical board to 15-19% and rejected his disability pension claim. Disability was once again assessed as 30% by the Medical Board but the CCDA(P) again reduced it to 15-19% in view of Regulation 173 of Pension Regulations for the Army, Part I. The Re-survey Medical Board confirmed permanent disability status with 90% disability but the CCDA(P) reduced the disability from 90% to 50% and granted disability pension @ Rs.225 per month from 19 Dec 1994. In the writ petition he prayed that the disability pension should be recomputed.

Held, there was no basis or reason or rationality with the CCDA(P) to disagree with the Reports of the Medical Board and Re-survey Medical Board. There was no

justification for the CCDA(P) to reduce the petitioner's disability from 30% to 15-19% from 90% to 50%. The Medical Board consists of specialists in the subject in the field of medical science and their opinion could not have over-ruled by those who had no occasion to make real assessment of the disability of the pensioner.

It is not in dispute that in calculating the length of qualifying service, fraction of a year equal to three months and above but less than six months shall be treated as a completed one half year and reckoned as qualifying service. The petitioner who got retired after rendering 18 years 4 months and 13 days service has actually rendered 18 years and 6 months and his disability pension should be reassessed treating his qualifying service as 18 years and 6 months.

Writ petition allowed and respondents directed inter alia to pay disability pension @ 30% from 1 Jun 1978 to 22 Mar 1987, 90% w.e.f 23 Mar 1987 and 100% w.e.f 12 Dec 1987, to recompute his service element of pension for 18 years and 6 months of service w.e.f 26 Jun 1983 onwards and pay the arrears with 18% interest within four months. Also entitled to cost as Rs. 3000. (Order dated 23 Mar 1999)."

"Surmukh Singh, Ex Hav v. Union of India, 1999(4) SLR 511(P&H).

Authority of CCDA(P)

Having suffered some eye disease, the petitioner, a Havildar, was down graded to medical category CEE for six months. Later, the Invaliding Medical Board boarded him out of military service with disability assessed at 40%. His claim was forwarded to CCDA(P) Allahabad for the sanction of disability pension who rejected it on the ground that the authority had found that the disability was less than 20%, which disentitled him to the award of disability pension.

Held, it was not open to the CCDA(P) Allahabad to review the findings of the Invaliding Medical Board as the opinion of the Board, which had been recorded on a physical examination of the patient, must be accepted. Moreover, it will be seen that the order gives no reason whatsoever as to why the CCDA(P) Allahabad had differed with the opinion of the Board with regard to the extent of the petitioner's disability."

"Mukhtiar Singh, Ex Hav v. Union of India, Delhi CWP No. 2811 of 1993.

Re-assessment

1. Twenty per cent, temporary disability pension was being given to the petitioner after he was assessed having 20% disability during Re-survey Medical Board held on AFMSF-17. Thereafter the proceedings of disability pension claim were sent to CDA(Pension) Allahabad. The latter ignored the opinion of the Re-survey Medical Board and once again assessed the petitioner's disability at eleven to fourteen % and disallowed the pension. The petitioner moved to the High Court.

Held, it was not open to the CDA(P) Allahabad to ignore the Re-Survey Medical Board opinion without any further reassessment by the Re-Survey Medical Board. The CDA(P) Allahabad was directed to pass appropriate orders for payment of disability pension at 20%.

(Petition allowed, order dated 6 Feb 1995)

10. In the case of **Ex-Rect Khageswar Nayak vs. Union of India and 5 others** in OA No. 105 of 2013 on 23.7.2014, the Kolkata Bench of AFT in an interim order had ruled as under :

"From the above facts it appears that that PCD(P) or CDA has acted as a superior authority to the Medical Board and overruled the Medical Board's opinion at its sweet will without even bothering to disclose any reason for such decision. This is absolutely illegal and unjustified."

11. In the same case while delivering another interim order on 21.08.2015 the Bench held -

"It appears that the disability element of pension sanctioned to the applicant by the Medical Board has been stopped by CCDA in terms of an order dated 12.7.1951. We have been confirmed by Shri Kamalesh Kumar Shukla, Sr. Accounts Officer from PCDA(P), Allahabad who appears today that the order of 1951 has now been withdrawn from 2005. From the affidavit filed today, it appears that the opinion of Medical Board has been reviewed by the Medical Advisor, pension to the Record Office. We fail to understand as to how the opinion of Medical Board consisting of 3 to 5 Medical Officers can be reviewed by one Medical Advisor. The decision taken by the Medical Board seems to be final and CCDA has no right to stop the pension. Accordingly as an interim measure, we direct the respondent authorities including the PCDA(P), Allahabad to restart the disability element of pension with effect from August, 2015 and the entire arrear of such pension will be deposited with this Tribunal within one month."

12. The case was finally decided in favour of the applicant on 11.02.2016 ruling that the above interim order be treated as the final order.

13. Also by a letter issued by ADG Personnel Services, Adjutant General's Branch, Integrated HQ of MoD (Army) letter No. B/39022/Misc/AG/PS-4(L)/BC dated 25.4.2011, the ADG (PS) specifically has ordered all Commands of the Army to withdraw from contesting in Court cases where finding of IMB/RMB has been altered by MAP in PCDA (P). Extracts of the letter are 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 judgments. Hon^{ble} 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."

14. In the light of the judgments quoted above as well as based on the policy letter, it is abundantly clear that the PCDA (P) Allahabad had exceeded their brief and had no reason whatsoever to arbitrarily reduce the disability element of disability pension to less than 20% w.e.f. 01.06.1979. The applicant is 74 years old and it would not be appropriate to ask him to appear before yet another Re-Survey Medical Board. Since his last Re-Survey Medical Board had recommended his disablement @40% for a period of two years, we find that the ends of justice will be served if the applicant is granted 40% disability element of pension which is to be rounded off to 50%.

15. In view of the above, the respondents are directed to broadband the disability element of the pension of the applicant from 40% to 50% with arrears for a period of 03 years preceeding the date of filing the OA i.e. on 18.12.2017. The arrears with interest shall be paid to the applicant within a period of three months from the date of receipt of a copy of this order.

16. OA is accordingly disposed of.

17. No costs.

18. Mr. C Baruah, learned CGSC appearing for the respondents has 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 question of law having general public importance, the prayer for leave to appeal to the Hon'ble Supreme Court stands rejected.

MEMBER (A)

MEMBER (J)