

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

O.A. 68/2016

PRESENT

**HON`BLE MR. JUSTICE B.P.KATAKEY, MEMBER (J)
HON`BLE LT GEN GAUTAM MOORTHY, MEMBER (A)**

No. 4361136X Ex Nk T Haupu Zou
Vill-P Kamdou Veng
PO-Churachandpur
Dist-Churachandpur, Manipur

..... **Applicant.**
By legal practitioners for
Applicant.
Mrs Rita Devi,
Mr. AR Tahbildar,

-Versus-

- 1. Union of India,**
Represented by the Secretary
Ministry of Defence
Sena Bhawan, New Delhi-11
- 2. Records The Assam Regiment**
PIN (ARMY)-900332
C/o-99 APO
- 3. Additional Directorate General,**
Personnel Service, 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 practitioners for
Respondents.
Mr. N. Baruah, CGSC.

Date of hearing : 18.04.2017

Date of order : 18.04.2017

ORDER

(Per BP Katakey, Member(J))

1. The applicant, who has been invalidated out from service on 01.09.2004, before completion of his term of engagement has filed this application challenging the decision of the respondent authorities in not granting disability element of the pension on the ground that the PCDA(P) Allahabad has already rejected the same on 30.12.2014. The applicant has also prayed for a direction to the respondent authorities to pay the disability element of the pension with effect from the date of his discharge with interest thereon.

2. We have heard Mr. AR Tahbildar, learned counsel appearing for the applicant and Mr. N. Baruah, learned CGSC assisted by Lt Akash Vashishta, OIC, Legal Cell, 51 Sub Area appearing for the respondents.

3. Learned counsel appearing for the applicant referring to the averments made in the application as well as the counter affidavit filed has submitted that though the applicant was found to be medically fit at the time of his enrolment on 15.06.1989, he has been invalidated out from service on 01.09.2004 before completion of his term of engagement as he was found to have suffered from Imermittent Complete Heart Block. The learned counsel submits that he having not suffered from the said disability at the time of his entry in service and such disability having been found just before his premature discharge from service on medical ground, it is to be treated as either attributable to or aggravated by medical service. Learned counsel also submits that Invalidating Medical Board having certified the percentage of disablement as 30% for life, direction may be issued to the respondent authorities to pay the disability element of the pension @ 30% with rounding off benefit to 50% with effect from the date of his discharge i.e. 01.09.2004. Learned counsel in support of his contention has placed reliance on the Judgment passed by the Hon'ble Supreme Court in *Dharamvir Singh Vs Union of India, (2013) 7 SCC 316 and Union of India & another Vs Rajbir Singh reported in (2015), 12 SCC 264.*

4. Learned counsel appearing for the respondents, on the other hand, referring to the averments made in the counter affidavit filed has submitted that since the applicant was discharged from service on being low medical category, he would have been entitled to the disability element of the

pension if such disability was found to be either attributable to or aggravated by military service. According to the learned counsel since the Medical Board has opined that the disability from which the applicant was found to have suffered was neither attributable to nor aggravated by military service, the applicant has rightly been denied the benefit of disability element of the pension. Learned counsel, therefore, submits that the applicant is not entitled to the relief claimed.

5. We have considered the submissions advanced by the learned counsel for the parties. We have also perused the pleadings.

6. It is not in dispute that the applicant was invalidated out from service because of the disablement, i.e. Imermittent Complete Heart Block as opined by the Medical Board in its proceeding dated 17.06.2004. Though the Medical Board in its proceeding had found the percentage of disablement of the applicant as 30% for life, it has, however, opined that such disablement was "not connected with service". Except saying that the disability was not connected with service, no reason whatsoever has been assigned by the Medical Board for rendering such an opinion though the applicant till the date of his discharge served in Indian Army for more than 15 years. The applicant's request for grant of disability element of pension was rejected by the PCDA (P), Allahabad on the ground that the disability was neither attributable to nor aggravated by military service. The applicant, thereafter consistently pursuing the remedies before the respondent authorities, firstly, by filing first appeal which was rejected on 06.05.2006 and thereafter by filing second appeal, which was also rejected. The applicant, thereafter, again filed representation on 06.05.2016 which has also been rejected by Senior Record Officer, Records The Assam Regiment on 23.05.2016 contending that his plea has already been rejected by PCDA (P) Allahabad on 30.12.2004 (wrongly typed as 2014). The applicant having entered into service in fit medical condition, the burden is on the respondents to demonstrate that the disability from which the applicant was found to have suffered was neither attributable to nor aggravated by military service. As noticed above, the Medical Board in its proceeding dated 17.06.2004, except making the statement that such disability was "not connected with service", did not disclose any reason for recording such opinion though such disability was found on the applicant after serving for more than 15 years in Indian Army.

7. The Hon'ble Supreme Court in *Dharamvir Singh (Supra) and Rajbir Singh (Supra)* has held that Rule 14(b) of the Entitlement Rules requires recording reason by the Medical Board in support of its opinion. It has further been held 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. The Hon'ble Supreme Court further observed that where the disease was wholly unrelated to military service, in order to deny the benefit of disability pension, it must be affirmatively proved and the burden lies on the respondent authorities to prove the same. As noticed above, the Medical Board has not record any reason in support of its opinion that the disability was not connected with service which was the basis for denying the benefit of disability element of pension to the applicant.

8. In view of the above and there being no dispute to the percentage of the disablement found by the Medical Board in its proceeding dated 17.06.2004, we set aside the action of the respondents in denying the benefit of disability element of pension to the applicant and direct the respondent authorities to pay the disability element of the pension @ 30% for life with rounding off benefit to 50% from the date of discharge i.e. 01.09.2004. The arrear shall carry interest @ 9% per annum from the said date till the date of payment. The arrear with interest shall be paid to the applicant within a period of 05 months from the date of receipt of a copy of this order.

9. OA is accordingly allowed.

10. No costs.

11. Mr. N. Baruah, learned CGSC has orally prayed for leave to appeal to the Hon'ble Supreme Court which, however, has been rejected as this order does not involve any point of law of general public importance.

MEMBER (A)

MEMBER (J)

Kalita

