

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

O.A. 75/2016

PRESENT

**HON`BLE MR. JUSTICE B.P.KATAKEY, MEMBER (J)
HON`BLE VICE ADMIRAL MP MURALIDHARAN, MEMBER (A)**

No. 4357365LK
Ex-Sep KL Solomon Anal
Vill-Unupat
P.O. Sugnu
Dist-Chandel, 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-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
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. C. Baruah, CGSC.

Date of hearing: 08.06.2017

Date of order : 08.06.2017

ORDER

(Per BP Katakey, Member (J))

1. The applicant, who was enrolled in the Army on 13.12.1983 as Sepoy and was invalidated out from service on 17.09.1986, after rendering little over two years of service, on medical ground has filed this application claiming disability element of the pension w.e.f. 29.06.1995 contending inter-alia that though the Re-survey Medical Board conducted on 21.03.1995 had assessed the degree of his disablement @ 20% for 10 (ten) years, no disability element of the pension was granted, as the PCDA(P) had rejected the same. The applicant has also prayed for continuance of his disability element of the pension after expiry of 10 years w.e.f 29.06.1995 with arrear and interest thereon.
2. We have heard Mr. AR Tahbildar, learned counsel appearing for the applicant and Mr. Rajiv Boro, learned counsel appearing on behalf of Mr. C. Baruah, learned CGSC assisted by Lt. Akash Bashisht, OIC Legal Cell, 51 Sub Area appearing for the respondents.
3. Referring to the averments made in the application as well as the counter affidavit filed, it has been submitted by the learned counsel for the applicant that though it is evident that the Re-Survey Medical Board in its proceeding dated 21.03.1995 had assessed the percentage of the disablement of the applicant @ 20% for 10 years, no disability element of the pension has been granted since PCDA (P) had rejected the recommendation of the Re-Survey Medical Board. Learned counsel further submits that the percentage of disablement having been assessed @ 20% by the said Re-Survey Medical Board and there being no other Re-Survey Medical Board having been conducted by the respondents after expiry of 10 years from 29.06.1995, the applicant is also entitled to disability element of the pension @ 20% after expiry of 10 years from 29.06.1995. It has also been submitted by the learned counsel that the applicant in fact on 17.01.2005 filed an application for conducting Re-Survey Medical Board based on which the respondent has written to the DGAFMS for obtaining sanction for holding Re-Survey Medical Board as stated by the respondents in their counter affidavit filed, despite which no Re-Survey Medical Board has been conducted so far.
4. Learned counsel appearing for the respondents, on the other hand, referring to the averments made in the counter affidavit filed and also the records produced has submitted that the applicant was initially granted disability element of pension @ 100% for two years on his invalidating out from service which, however, has been

reduced to 20% thereafter till Re-survey Medical Board was conducted on 28.06.1995. Learned counsel further submits that from 28.06.1995, the payment of disability element of pension has been discontinued as the PCDA (P) did not agree with the opinion of the Re-survey Medical Board that percentage of disablement of the applicant was @ 20%. Learned counsel referring to the records has also submitted that despite issuance of the communication to the applicant requiring him to appear before the Re-Survey Medical Board, since he did not appear, no such Re-Survey Medical Board was held to ascertain the percentage of his disablement, if any. Learned counsel, therefore, submits that the applicant is not entitled to the relief claimed in the OA.

5. We have considered the submissions advanced by the learned counsel for the parties, the averments made in the OA as well as the counter affidavit filed. We have also perused the records produced by Lt. Akash Bashisht OIC Legal Cell, 51 Sub Area. It is evident from the records that on invalidment of the applicant from service, he was granted disability element of pension@100% for a period of two years apart from the service element of pension for life. The disability element of pension has been reduced thereafter to 20% which continued till 29.06.1995. The payment of the disability element of the pension was discontinued w.e.f 29.06.1995, despite the opinion of the Re-Survey Medical Board that the degree of disability of the applicant continued to be @20% for a period of 10 years, as the same has not been accepted by the PCDA (P), Allahabad.

6. It is settled position of law that PCDA (P) has no authority and jurisdiction to disagree with the opinion of the Re-Survey Medical Board, that too without any physical examination of the applicant as it has been done in the instant case. The Re-Survey Medical Board on 29.06.1995 having opined that the percentage of disablement of the applicant was @20% for a period of 10 years from 29.06.1995, the PCDA (P) cannot overturn the said medical opinion. Hence the action on the part of the PCDA (P) in refusing to pay disability element of the pension to the application @ 20% for the aforesaid period of ten years cannot be sustained in law. Consequently, the applicant is entitled to the disability element of the pension @ 20% for the aforesaid period of 10 years w.e.f. 29.06.1995 with the rounding off benefit to 50% w.e.f. 01.01.1996 till 28.06.2005, which shall be paid by the respondents to the applicant within a period of six months from today. In the event of failure to do so within the aforesaid period, the said amount would carry interest @ 9% per annum from the date when it becomes due till the date of payment.

7. The next question which requires our determination is whether the applicant is entitled to the disability element of the pension w.e.f. 29.06.1995 till date. The records reveal that the first request of the applicant for Re-survey Medical Board was accepted and Re-survey Medical Board was conducted where the percentage of the disablement was found to be 15% to 19%. The applicant, thereafter filed another

application to have another Re-survey Medical Board which was also accepted by the respondent authority. The records also reveal that based on the subsequent application filed by the applicant, the Base Hospital was directed to conduct Re-Survey Medical Board. Nothing, however is available on the record whether any such Re-Survey Medical Board in the year 2005 was conducted. It is also evident from the affidavit filed by the respondents that the applicant has filed an application on 25.08.2016 for conducting Re-survey Medical Board, based on which the authority has written to the DGAFMS for granting the sanction for holding such Re-survey Medical Board vide communication dated 09.02.2017.

8. In view of the above and there being no Re-Survey Medical Board conducted in the year 2005 and thereafter, we direct the respondent authorities to conduct Re-survey Medical Board within a period of four months from today with due intimation to the applicant at least 03 weeks prior to the date to be fixed for such Re-Survey Medical Board. In the event the applicant fails to appear before the Re-Survey Medical Board on the date to be fixed, no further Re-Survey Medical Board would be conducted. However, in the event, the applicant appears, the respondents will take appropriate decision relating to the grant of disability element of the pension based on the opinion of the Re-Survey Medical Board directed to be conducted. The entire process shall be completed within a period of six months from today. In case, the applicant is found to be entitled to disability element of the pension based on the opinion of the Re-Survey Medical Board, the applicant would also be entitled to the benefit of rounding off.

9. The OA is accordingly partly allowed to the extent as indicated above.

10. There will be no order as to costs.

11. Order dasti

12. Learned counsel 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 this order does not involve any question of law having general public importance, the prayer stands rejected.

MEMBER (A)

MEMBER (J)