

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

OA- 78 of 2016

PRESENT

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

**No.4345034A
Ex-Sep Vumkhotuan
Vill - Lungehin
P.O. Singhat
Dist-Churachandpur, Manipur**

..... Applicant

By legal practitioners for
Applicant.

**Mrs. Rita Devi
Mr. A.R.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, New Delhi
- 4. The Principal Controller of Defence
Accounts (Pension)**
Allahabad, PIN 211014
Uttar Pradesh

..... Respondents

By Legal Practitioner for the
Respondents
Mr. N. Baruah, CGSC

Date of Hearing : 09.05.2018
Date of Order : 09.05.2018

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

This application has been filed U/s 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has prayed for disability element of pension as well as broadbanding of the same.

1. The fact of the case is that the applicant was enrolled in the Indian Army as Sepoy on 20.03.1970 and was invalided out from service before completion of his term of engagement as he was placed on Low Medical Category BEE (P).
2. The Release Medical Board has classified his disability as "Abdominal Tuberculosis" attributable to military service with remark ***"Infection contracted while in service"***. However, the percentage of disablement was assessed at 15 – 19% for a period of two years and was released in Low Medical Category BEE (P). The claim for disability element of pension in respect of the applicant was rejected by PCDA (P) vide their letter dated 22.06.1978 on the ground that *"the disease is not attributable to military service and the disability has been assessed at less than 20%."*
3. The PCDA (P), however, with their PPO No. D/SE/122/78 dated 06.11.1978 granted service element of disability pension with effect from 28.12.1978. Also no Re-survey Medical Board was held in accordance with the recommendation of the Release Medical Board after the period of two years.
4. The respondents in their counter affidavit have simply stated that although the Release Medical Board considered his disease as attributable to military service it was assessed at less than 20% for two years. Accordingly he was discharged from service w.e.f. 28.12.1977 under Army Rule 13(3) (iii)(v) without disability element of

pension. The claim for disability element of pension of the applicant was submitted

to the PCDA(P) by the Records of Assam Regiment vide their letter dated 01.03.1978 and the same was rejected vide PCDA(P) letter dated 22.06.1978 on the ground that the disease is not attributable to military service and the disability has been assessed at less than 20%.

5. Para 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."*

6. The Hon'ble Supreme Court in **Sukhvinder Singh v. Union of India (2014) 14 SCC364 in Para 3 has held -**

" We are not a little surprised that although the Rules or Regulations (Chapter VII of the Regulations for the Medical Services of the Armed Forces, 1983) specifically postulate the formation of Invalidation Medical Boards, they do not set out the medical parameters justifying or requiring servicemen/officer to be removed from service. This feature renders decisions taken by such Boards pregnable to assaults on the grounds of capriciousness or arbitrariness, and this is especially so where the extent of the disability is below twenty per cent. Can the authorities be permitted to portray that whilst a person has so minor a disability as to disentitle him for compensation, yet suffers from a disability that is major or serious enough to snatch away his employment? This is especially so since Regulation 132 ordains that the "minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years". Moreover, in the case in hand, it appears that no efforts were undertaken by the respondents to consider whether the appellant could continue in service in a lower medical category."

7. The Hon'ble Supreme Court in Para 8, by commenting on these Regulations has also stated –

"8. We think that it is beyond cavil that a combatant soldier is liable to be invalided out of service only if his disability is 20% or above and there is a further finding that he cannot discharge duties even after being placed in a lower medical category. We are indeed satisfied to note that Regulation 173 Appendix II(10) postulates and permits preferment of claims even "where a disease did not actually lead to the member's discharge from service but arose within ten years thereafter". We just as every other citizen of India, would be extremely disturbed if the authorities are perceived as being impervious or unsympathetic towards members of the armed forces who have suffered disabilities, without receiving any form of recompense or source of sustenance, since these are inextricably germane to their source of livelihood. The learned counsel for the respondents has failed to disclose any provision empowering the invaliding out of service of any person whose disability is below 20%. Indeed, this would tantamount to dismissal of a member of the armed forces without recourse to a court martial which would automatically entitle him to reinstatement."

8. The Hon'ble Supreme Court in Para 11, further states –

"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 perforce 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."

9. In the case in hand, it is not understood how the PCDA (P) converted the disease attributable to military service to non-attributable military service.

10. In this context, AG's Branch vide their letter No. B/39022/Mise/AG/PS-4(L)/BC dated 25.04.2011 has directed all Commands to withdraw from contesting in court cases where finding of IMB/RMB has been altered by MAP in PCDA (P).

11. The respondents in this case admit that the applicant's case clearly comes within the purview of the above mentioned letter where the MAP (PCDA (P) had denied the claim for disability pension of the applicant overruling the recommendations of the Release Medical Board. Hence we deem it proper to grant relief to the applicant instead of remitting the matter for decision of the respondents.

12. For the reasons mentioned above, the application is allowed. The applicant is entitled to grant of disability pension taking his disability as 20% till 31.12.1995 which is to be rounded off upto 50% w.e.f. 01.01.1996 as per Government's circular issued in the year 2001 as it was illegally denied to the applicant abinitio by the office of PCDA (P). The arrears are to be calculated and paid to him within a period of three months from the date of receipt of this order failing which simple interest @8% per annum will be levied on the arrears.

13. OA is accordingly disposed of.

14. No costs.

MEMBER (A)

MEMBER (J)