

**ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI**

OA -16/2023

NO.14703024 Ex Sep
Th Hingba Maram
Vill Siddim PO Karong
Dist. Senapati, Manipur

... Applicant

By legal practitioners for Applicant
A.R.Tahbilkdar

- Versus -

1.The Union of India
Represented by the Secretary
Ministry of Defence
Sena Bhawan, New Delhi-11

2.The Officer-in-charge, Records
The Kumaon Regiment
PIN- 900473 C/O56 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, Uttar Pradesh

... Respondents

By legal practitioner for Respondents
Dipanjali Bora, CGSC

CORUM:**HON'BLE MR. JUSTICE K. HARILAL, MEMBER (J)****HON'BLE AIR MSHL BALAKRISHNAN SURESH, MEMBER (A)****ORDER****04.04.2024****(K.Harilal, J)**

Aggrieved by the denial of disability pension by the interference of PCDA(P) with the medical opinion of the Release Medical Board, the applicant has filed this Original Application and prayed for an order directing the respondents to grant disability pension to him after setting aside the impugned Order No.G-3/69/03/1-2001 dated 18.07.2001 passed by the PCDA(P).

2. The applicant, No. 14703024X Ex-Sep TH Hingba Maram, was enrolled in the Army on 15.12.1994 in SHAPE-1 and invalided out in low medical category on 01.11.2000, after 5 years, 10 months and 15 days of qualifying service. According to him, at the time of enrolment, he had undergone thorough medical examination and he was found physically and mentally fit by the duly constituted Medical Board. Neither was there any note of existence of any disease suffered by him nor is there history of any hereditary disease in the family of the applicant in the medical sheet maintained at the time of enrolment. While in service, he sustained head

injury on 14th June, 1998 while on duty in a modified field area. A Court of Inquiry was held on 11th November 1998 and subsequent days to investigate the circumstances under which he sustained injury on 14.06.1998. The Court of Inquiry opined that the injury was attributable to military service and subsequently, the Commanding Officer has also opined that the head injury was sustained while on duty and the injury is attributable to military service. Annexure-A is the copy of the Court of Inquiry proceedings. He was placed in low medical category due to 'Head Injury Right Temporal EDH' and subsequently, he was invalided out from service on that ground with effect from 01.11.2000 in CEE(P) medical category on recommendation of the Release Medical Board, after 5 years, 10 months and 15 days of qualifying service. At the time of invalidment, he was neither furnished with the copy of Release Medical Board proceedings, nor was he informed about the degree of disability. However, after his medical examination, he was told by the medical as well as service authorities that since his disability has developed due to the injury sustained during military duty, he would be granted disability pension by the competent authority and he was under such an impression. Since he was not granted disability pension, on the advice of some senior Ex-servicemen, he met at an ESM Rally on 01-11-2022, he submitted an application under the Right to Information Act, 2005 on 17.11.2022

requesting to provide him the copies of the Release Medical Board proceedings as well as the decision of the competent authority on the claim for disability pension to him and thereby, he obtained Annexure-D communication. In Annexure-D communication, the respondents have stated that PCDA(P) vide Letter No. G-3/69/03/1-2001 dated 18.07.2001 had rejected the disability pension claim of the applicant by re-assessing the applicant's disability to be neither attributable to nor aggravated by military service as well as being constitutional in nature and not related to service, thereby reversing the opinion of the Release Medical Board. Annexure-E is the copy of the Release Medical Board proceedings. According to the applicant, PCDA(P) has no power to interfere with the medical opinion without physical and clinical examination of the applicant by a more competent medical board and thereby, the interference of PCDA(P) with the medical opinion of the Release Medical Board was illegal, improper and arbitrary, warranting interference of this Tribunal. Though immediately after the receipt of Release Medical Board proceedings, he had preferred a statutory appeal, the same was rejected as time-barred. In the above circumstances, the applicant was left with no remedy other than approaching this Tribunal.

3. In the Affidavit-in-Opposition, the respondents have admitted that the applicant was invalided out from service on 31st October, 2000 under Army

Rule 13(3)(III)(v) in low medical category CEE(P) for the disability 'Head Injury Rt Temporal EDH (N-854, E-884)' due to non-availability of sheltered appointment commensurate to his service. Prior to his invalidment, he was brought before an Invaliding Medical Board on 3rd October, 2000 held at 92 Base Hospital. As per the opinion of the Medical Board, the disability 'Head injury Rt Temporal EDH (N-854, E-884)' was attributable to military service with composite assessment at 40% for probable duration of disability for 10 years. Though the disability of the applicant was held as attributable to military service by the Invaliding Medical Board, his claim was required to be processed with final approval of the competent pension sanctioning authority, PCDA(P), Allahabad, for adjudication of disability claim. Therefore, Records the Kumaon Regiment processed the claim of the applicant with PCDA(P), Allahabad vide Annexure-CA-V. However, the Medical Advisor (Pension) attached with PCDA(P), Allahabad, overruled and rejected the claim of the applicant in terms of Para 173 of the Pension Regulations for the Army, 1961 vide Annexure CA-VI. Subsequently, the Records the Kumaon Regiment vide their letter No.14703024/03/DP dated 3rd August 2001 informed the applicant of the rejection of his claim for disability pension by PCDA(P). It is also admitted by the respondents that the applicant has put in 5 years and 4 months of service so far, and he was willing to continue in the service. The disability of the applicant is unlikely to

be curable. Due to his non-curable disability, he has been permanently downgraded to medical category CEE by the medical authority. Due to his disability, the applicant was not able to perform his normal routine or sedentary duties. The general attitude of the applicant and response towards the routine duty was poor.

4. Heard Mr.A.R.Tahbildar, learned counsel appearing for the applicant and Mrs.Dipanjali Bora, learned Central Government Standing Counsel appearing for the respondents.

5. The crux of the arguments advanced by the learned counsel appearing for the applicant is that the interference of PCDA(P) with the opinion of the Release Medical Board that the disability was attributable to Army service, on the basis of the opinion of their medical advisor, without physical and clinical examination of the applicant by a more competent medical board is illegal, improper and arbitrary, warranting interference of this Tribunal and that the PCDA(P) has no such power under any law, rule or regulation to reverse the opinion of the Release Medical Board.

6. *Per contra*, the learned Central Government Standing Counsel appearing for the respondents argued to justify the interference of PCDA(P) stating that the interference was on the advice of the medical advisor, even though it was without physical and clinical examination of the applicant, by a competent medical board.

7. In view of the rival pleadings, documents on record and submissions at the Bar, the point to be considered is, has there been any illegality, impropriety or arbitrariness in the reversal of the medical opinion of the Release Medical Board by PCDA(P), without physical and clinical examination of the applicant by a more competent medical board?

8. We are of the opinion that this question is no longer *res integra* as it stands answered and settled by the Supreme Court in **Ex-Sapper Mohinder Singh v. Union of India and another (Civil Appeal No.164 of 1993 decided on 14.1.1993)**. In the above decision, the Supreme Court held that the opinion expressed by the Medical Board has to be given due weight, value and credence and could not have been discarded by PCDA(P), without physical examination of the individual as the attestation without physical examination does not stand to scrutiny of law. Hence, we are inclined to set aside the impugned Order No.G-3/69/03/1-2001 dated 18.07.2001 passed by the PCDA(P) and restore the medical opinion of the Release Medical Board that the disability is attributable to military service. Therefore, the applicant was entitled to get disability pension, as stated by the Release Medical Board.

9. The above view is further supported by the decision of the Supreme Court in **Ministry of Defence v. A.V.Damodaran [(2009) 9 SCC 140]** in which it was held thus:

"17. I have heard the learned counsel for the parties. I am of the considered view that the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence. In the instant case, the Medical Board has clearly opined that the disability of late Shri A.V.Damodaran was neither attributable nor aggravated by the military service. In my considered view, both the learned Single Judge and the Division Bench of the High Court have not considered this case in perspective and in the light of the judgments of this Court. The legal representatives of A.V.Damodaran are not entitled to the disability pension.

Xxxxx xxxxx xxxxx xxxxxx xxxxx

34. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the Medical Board shall be given weightage and primacy in the matter for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service."

10. It is true that the disability was assessed at 40% for 10 years only on 3rd October, 2000. Therefore, the respondents should have taken necessary steps to hold a review/re-assessment of the disability of the applicant on or before October, 2010. But the respondents have not made any attempt to recall the applicant for re-assessment/ review of his disability after 10 years. It was the responsibility of the respondents, and we do not find fault with the applicant in that respect. As per the medical opinion of the Release Medical Board, the disability 'Head Injury Rt Temporal EDH N854 E-884' was caused by the head injury which he sustained on 14th June, 1998 while on duty. More importantly, in the

O.A. 16 of 2023

Affidavit-in-Opposition filed by the respondents, in Paragraph No. 4, the respondents themselves have admitted that "the applicant's disability is unlikely to be curable and due to non-curability, he has been permanently downgraded to low medical category CEE by the medical authority". Therefore, there was every possibility to continue the disability even after 10 years. Moreover, the respondents have stopped the recurring periodical review of the disability of the individual, except on the request of the individual, by Policy Letter No.1(2)/97/D(Pen-C) dated 07.02.2001 issued by the Ministry of Defence, Government of India. In that view also, an individual who was invalided out from service due to the disability like head injury, sustained while on duty and that which is incurable, would be entitled to get disability pension for life for the interest of justice and equity. However, the applicant cannot be allowed to suffer for the negligence and laches from the part of the respondents for not taking steps for review/re-assessment within the specified time. But there is a delay of more than 24 years in challenging the denial of disability pension, whatever be the reason. Hence, he will be entitled to get arrears only for three years prior to the filing of this O.A. Similarly, since he was invalided out of service after 1.1.1996, he will be entitled to get rounding off benefit also, which is supported by the decision of the Supreme Court in *Union of India and others v. Ram Avtar (Civil Appeal No.418 of 2012)*.

11. In the above analysis, we are inclined to allow this O.A. and we do so.

In the result,

i) the impugned order No.G-3/69/03/1-2001 dated 18.07.2001 passed by the PCDA(P) is set aside; and

ii) respondents 2 to 4 are directed to issue a PPO granting disability pension to the applicant for his disability ' Head Injury Rt Temporal EDH N 854 E-884' for 40% which would stand rounded off to 50% and pay the arrears for the period of three years prior to the date of filing of this O.A., at the earliest, at any rate, within five months from the date of receipt of a copy of this Order. In the event of failure, the arrears would carry interest at 9% per annum.

12. The application is accordingly disposed of, so also the pending misc. application(s), if any. No order as to costs.

(AIR MSHL BALAKRISHNAN SURESH)
MEMBER (A)

(JUSTICE K.HARILAL)
MEMBER (J)

Sha/mc