

# IN THE ARMED FORCES TRIBUNAL

## REGIONAL BENCH, GUWAHATI

OA- 14/2017.

PRESENT

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

No. 4347726K Ex Sep  
Paozamang Vaiphei  
Vill D. Phallian  
PO Churachanpur  
Dist. Churachandpur, Manipur.

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

**-VERSUS-**

1. Union of India,  
Represented by the Secretary,  
Govt. of India, Ministry of Defence  
Sena Bhawan, New Delhi – 110011.
2. Records the Assam Regiment  
Pin (ARMY)-900332 C/O 56 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 Practitioner for the  
Respondents  
Mr.D.C.Chakraborty

Date of Hearing : 25.05.2017

**Date of Order : 25.05.2017**

### **ORDER**

**( B.P.Katakey,J)**

The applicant, who was enrolled as Sepoy in the Indian Army on 18.7.1975 and discharged on 06.07.1985 and was initially assessed his degree of disablement as 30% for a period of 2 years and accordingly granted disability pension from 07.07.1985, has filed this application challenging the order dated 17.08.2016 passed by the Senior Records Officer OIC Records, Assam Regiment, rejecting his prayer for grant of disability pension on the ground that his percentage of disablement was re-assessed as less than 20% ( 15-19%) by the Re-survey Medical Board on 30.11.2004.

2. We have heard Mr.A.R.Tahbildar, learned counsel appearing for the applicant and Mr. D.C.Chakraborty, learned CGSC appearing for the respondents.

3. Referring to the Release Medical Board proceedings dated 16.3.1985, it has been submitted by the learned counsel for the applicant that since the applicant at the time of discharge was found to have suffered from disability "CSOM(RT)" 381, the percentage of which was found to be 30 for 2 years, which was attributable to service due to infection contacted during his service, the applicant was granted disability pension @ 30% from 07.07.1985 to 20.03.1989 and

thereafter discontinued , as the percentage of disablement was found to be less than 20% w.e.f. that date. It has also been submitted that thereafater a Re-survey Medical Board was conducted on 30.11.2004 and after due examination the applicant was found to have suffered from the same disability, the percentage of which was found to be 20% and despite that the authority has refused to grant disability pension to the applicant based on the opinion of Re-survey Medical Board dated 30.11.2004. The learned counsel submits that since the impugned order dated 17.08.2016 is contrary to Re-survey Medical Board proceedings dated 30.11.2004, the same may be set aside and the respondents may be directed to grant disability pension to the applicant w.e.f. 30.11.2004 with arrear for the period of 3 years preceding the date of filing of the representation before the respondent authority i.e. 03.08.2016.

4. Mr.D.C.Chakraborty, learned counsel appearing for the respondents on the other hand referring to the records produced before this Tribunal has submitted that the Re-surey Medical Board in its proceedings dated 30.11.2004 did not certify the percentage of disablement of the applicant as 20%, but has certified the same to be between 15-20% and hence, the applicant has been rightly denied the disability pension by the impugned order dated 17.8.2016.

5. The learned counsel appearing for the applicant in his rejoinder argument, referring to the Re-survey Medical Board proceedings dated 30.11.2004 produced by the respondents, has submitted that it is apparent therefrom that opinion of the Re-survey Medical Board dated 30.11.2004 relating to the percentage of disablement, which has been approved by the competent authority on 18.11.2004, has subsequently been changed by the President of the Medical Board as between 15-19%, which the President of the Medical Board could not have done, the earlier percentage having been approved by the competent authority. The learned counsel, therefore, submits that due to above change of the Medical Board opinion only by one Member of the Medical Board i.e. by the President, the applicant cannot be denied the benefit of disability pension to which he is otherwise entitled to.

6. We have considered the submissions advanced by the parties and perused the records produced by Mr.D.C.Chakraborty, learned counsel for the respondents.

7. It is apparent from the impugned order dated 17.8.2016 that the applicant has been denied disability pension only on the ground that the percentage of disablement was assessed by the Re-survey Medical Board at less than 20% i.e. 15-19 % for life. The claim of the applicant has not been rejected on the ground that the disability was neither attributable to nor aggravated by military service. The

applicant along with OA has filed the Re-survey Medical Board proceedings dated 30.11.2004, wherefrom it is apparent that the percentage of disablement was assessed at 20% for life by the Medical Board consisting of 3 Officers including the President of the Medical Board. The said proceedings have been approved by the competent higher authority on 18.12.2004.

8. The records produced by Mr.D.C.Chakraborty, learned counsel for the respondents, reveal that the said proceedings of the Re-survey Medical Board dated 30.11.2004 has been altered by the President of the Re-survey Medical Board alone changing the percentage from 20% to 15-19%, which could not have been done by the President of the Re-survey Medical Board alone and that too after approval was granted by the higher authority on 18.12.2004 on the percentage of disablement found by the Re-survey Medical Board. The said action, on the part of the President of Resurvey Medical Board, is, therefore, illegal and hence cannot be the basis for refusal to grant disability pension as has been done in the instant case.

9. In view of the above, we set aside the communication dated 17.08.2016 issued by the Senior Records Officer, OIC Records, Assam Regiment and direct the respondents to grant disability pension to the applicant w.e.f 30.11.2004 with arrear for the period of 3 years preceding the date of filing of the representation by the applicant

before the authority, i.e. 03.08.2016. The applicant shall also be entitled to the benefit of rounding off the same from 20% to 50% with effect from the aforesaid date. The arrear will carry interest @ 9% per annum from the said date till the date of payment. The arrear along with interest shall be paid within a period of 6 months from the date of receipt of a copy of this order.

10. The OA is accordingly allowed to the extent indicated above.

11. A Photostat copy of the Re-survey Medical Board proceedings dated 30.11.2004, as produced by Mr.D.C.Chakraborty, learned counsel for the respondents, is kept on record.

12. Order dasti.

**MEMBER(A)**

**MEMBER (J)**

mc

