

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

OA- 39 of 2017

PRESENT

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

No.14254319-N
Ex-Hav Hitesh Ch Bezbaruah
S/o Late Arun Ch Seal
Vill& PO-Batsor
Dist-Nalbari, Assam

..... 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. **The Signals Records**
Post Bag No. 5
Jabalpur-482001
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 : 07.05.2018
Date of Order : 11.05.2018

ORDER

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

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by which the applicant has challenged the rejection of disability pension claim as neither attributable nor aggravated by military service.

1. The applicant was enrolled as Signalmán on 13.01.1984. In February, 2001, the applicant while serving in Jammu & Kashmir developed severe physical difficulties as he was diagnosed with 'Myasthenia Gravis' (Stage II). After its detection, he was referred to various medical authorities and ultimately to the Army Hospital, R & R, Delhi Cantonment. The applicant was ultimately discharged in the rank of Havildar on 30.04.2003 with 40% disability with remark that his disease was aggravated by military service and was *"due to stress and strain of military service while serving CI operation, BSSR, C/o 99 APO between Jan 2001 to Dec 2002 and such aggravation still persists and will continue to persist for a material period of time.* The percentage of disablement was assessed at 50%.

2. The respondents in their affidavit in opposition have stated his claim for disability pension was rejected by the Medical Adviser (Pension), PCDA (P) Allahabad on the plea that "the disability was neither attributable nor aggravated by military service and not connected with service."

3. In the landmark judgment by the Hon'ble Supreme Court of India '**UOI & Anr Vs. Rajbir Singh, Civil Appeal No. 2904 of 2011, 2015(2) SCC**, it was held that *"to justify the denial of disability pension, it must be affirmatively proved that the disease had nothing to do with such service and the burden to establish such a disconnect would lie heavily upon the employer....."*.

4. Regulation 173 of Pension Regulations for the Army, 1961 relates to the primary conditions for the grant of disability pension and Paras 16 & 17 of the Regulations read as follows-

"16. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed 20 percent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II"

17. From a bare perusal of the Regulation aforesaid, it is clear that disability pension in normal course is to be granted to an individual (i) who is invalidated out of service on account of a disability which is attributable to or aggravated by military service and (ii) who is assessed at 20% or over disability unless otherwise it is specifically provided."

5. Entitlement Rules for Casualty Pensionary Awards 1982 Para 9 under heading 'Onus of Proof' it clearly states that *"the claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/abroad service cases."*

6. 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).

7. 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.

8. The aforesaid letter speaks volumes. Percentage of disability assessed at 50% by Release Medical Board has been reduced to Nil by PCDA (P) without having any jurisdiction and competence in this regard and therefore, the applicant was certainly entitled for grant of disability in the light of the opinion 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.

9. For the reasons mentioned above, the application is allowed. The applicant is entitled to grant of disability pension taking his disability as 50% which is to be rounded off upto 75% as per Government's circular issued in the year 2001 with effect from the date of his retirement i.e. 01.05.2003 since it was illegally denied to the applicant 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.

10. OA is accordingly disposed of.

11. No costs.

12. After pronouncement of the judgment, Mr. N Baruah, learned CGSC 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 the order does not involve any point of law having general public importance, the prayer for leave to appeal to the Hon'ble Supreme Court stands rejected.

MEMBER (A)

MEMBER (J)