IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI.

O.A. – 45 OF 2016

No. 4354614N Ex Sep Langkhan Mang,
Son of Thankholien,
Resident of Vill. P.Kamdou Veng,
P.O.+ Dist. Churachandpur,
State Manipur, Pin- 795128.

…..**Applicant.**
By legal practitioners
for Applicant.
Mr. Tapan Deori,
Mr. U.Sarma,
Mr. H.Bezbaruah,
Mr. ANI Hussain.

-Versus-

1. **Union of India,**
   Represented by the Secretary,
   Govt. of India, Ministry of Defence(MoD),
   South Block, New Delhi-110011.

2. **Addl. Directorate General Personnel Services,**
   Adjutant General's Branch,
   Integrated Head Quarter of MoD(Army),
   DHQ, New Delhi-11.

3. **The Principal Controller of Defence Acctts (Pension),**
   Draupadi Ghat, Allahabad- 211014.

4. **Record Officer for Officer-in-Charge,**
   Records, The Assam Regiment,
   PIN (Army) – 900332.

…….**Respondents**
By legal practitioners
for Respondents.
Mr. N.Baruah,,**CGSC.**

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

ORDER
23.05.2017

(By Vice Admiral MP Muralidharan)

This Original Application has been filed by Ex-Sep Langkhan Mang, No. 4354614N of the Assam Regiment for grant of disability pension.

2. The applicant was enrolled in the Army (Assam Regiment) on 17th December, 1980 and was discharged from service with effect from 01.09 1991 under Army Rule 13(3)(III)(v). The Medical Board held at the time of his discharge assessed him to have the disability STAPMYLOCOCCAL PNEUMONIA , which was assessed at 30% for two years (Annexure-1). While the Medical Board assessed his disability as attributable to service, his claim for disability pension was rejected by PCDA(P) holding that the disability was less than 20% (Annexure-3).

3. Mr. U.Sarma, the learned Counsel for the applicant , submitted that the applicant was fully fit at the time of his enrolment in the Army in 1980. He was assessed to have the disability of STAPMYLOCOCCAL PNEUMONIA in July 1988. Release Medical Board assessed his disability at 30% with the probable duration of disablement of two years. The Medical Board also held that the disability arose due to stress and strain of military service. However, he was not granted any disability pension by PCDA(P), who held that the percentage of disability accepted was NIL (Annexure-3). The learned Counsel further submitted that as the applicant's disability was held as due to stress and strain of military service by the Medical Board, he should have been granted disability pension. He also contended that PCDA(P) was not the competent authority to overrule the findings of a Medical Board. The learned Counsel therefore prayed that the applicant be granted disability pension with the benefit of rounding off.

4. Mr., N.Baruah, the learned Central Govt. Standing Counsel, appearing for the respondents submitted that at the time of discharge of the applicant the Release Medical Board assessed him to have the disability of STAPMYLOCOCCAL PNEUMONIA at 30% for two years. Accordingly, disability pension claim of the applicant was submitted to PCDA(P), who on adjudication rejected the claim as the

degree of disability was held as less than 20%. The applicant who was informed of the rejection of his disability pension claim and was advised to prefer an appeal to the competent authority in case he was not satisfied with the decision within a period of six months. The applicant however did not prefer any appeal against the rejection of his disability pension claim.

5. Heard rival submissions and perused the records.

6. It is not disputed that at the time of discharge of the applicant theRelease Medical Board assessed him to have the disability of STAPMYLOCOCCAL PNEUMONIA, with degree of disability assessed at 30% for two years. While the disability was considered as aggravated by military service by the Medical Board, the pension sanctioning authority held that disability pension was not admissible as the degree of disability was assessed as less than 20% (Annexure-3) by them. It is also not disputed that the applicant did not prefer any appeal against the non-grant of the disability pension.

7. Since the applicant was discharged in 1991, Pension Regulaytions for the Army 1961, would apply and Regulation 173 which provides for grant of disability pension reads as follows:

> "173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an invididual who is invalided out of service on account of disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over. The question whether a disability is attributable to or agravated by military service shall be deermined under the rule in Appendix II."

8. The Regulations specify two conditions for grant of disability viz., disability is to be above 20% and should be attributable to or aggravated by military service. It is further specified that attributability or aggravation is to be decided under rules at Appendix II, i.e. Entitlement Rules for Casualty Pensionary Awards, 1982 of which, Rules 5, 9 and 14 are relevant in deciding the issue. As per Rule 5, a member is

presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance. In the event of his subsequently being discharged from service on medical grounds, any deterioration in his health which has taken place is due to service. While under Rule 9 the claimant shall not be called upon to prove the conditions of entitlements, Rule 14 specifies rules to be observed in respect of diseases to decide the aggravation/attributability.

9. The above Rules were looked into by the Honourable Apex Court in **Union of India and Another Vs. Rajbir Singh, Civil Appeal No. 2904 of 2011,** during which the Apex Court also referred to its decisions in **Dharamvir Singh Vs. Union of India & Ors. (2013) 7 SCC 316,** and held as follows:

> "15…….The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to be contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to aceptance for service, the Medical Board must state the reasons for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces……."

10. The disability of the applicant, STAPMYLOCOCCAL PNEUMONIA, was held by the Release Medical Board as attributable to military service. It is observed that

as per Annexure-III to Entitlement Rules, Pneumonia is one of the diseases affected by climatic conditions. It is also obserfed that the Release Medical Board clearly held that the disease arose as a result of lowered resistance to infection due to stress and strain of military service. The Medical Board also held that the disability did not exist prior to entry of the applicant into military service (Annexure-I). The Medical Board also assessed the disability at 30% for two years. That being so, it is not clear as to how PCDA(P) without examining the applicant held that the disability was less than 20%.The Hon`ble Apex Court in **Secretary, Ministry of Defence and Others Vs. A.V.Damodaran (Dead) Through LRs. And Others, (2009) 9 SCC 140,** clearly held that the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence. Therefore, when the Medical Board held the disability of the applicant to be 30%, PCDA(P) could not have overruled the decision.

11. In our view, therefore, based on the principles enunciated by the Hon`ble Apex Court in **AV Damodaran and Rajbir Singh** (both Supra), the applicant was eligible for grant of disability pension at the time of his discharge from service. However, the disability was assessed only for a period of two years and no medical records have been placed before us to indicate if any subsequent reassessment was carried out. In our view, at this belated stage, a reassessment Medical Board would serve no purpose as with the lapse of time and a onset of age, even a person who was healthy 25 years ago, may have various ailments. Therefore, in our view, the applicant could only get the benefit of Regulation 186(2) of the Pension Regulation for the Army, 1961. At this juncture we would also like to observe that at the stage of conclusion of arguments in the case, the learned Counsel for the applicant also appealed that in case the applicant was not eligible for grant of disability pension, grant of relief under Regulation 186(2) may also be considered.

12. Regulation 186(2) specifies that an individual who was initially granted disability pension, shall continue to draw the service element of disability pension even if the disability was subsequently reassessed at below 20%. In case of the applicant, his disability was assessed at 30% for two years, but his claim was rejected by the adjudicating authority, PCDA(P) who held that it was less than 20%.

However, as held by us, PCDA(P) could not have overruled the Medical Board and based on the findings of the Medical Board, the applicant was eligible for grant of disability pension at the time of his discharge albeit for two years. Since there was no reassessment Medical Board nor is one recommended at this belated stage, even assuming that the disability had fallen below 20% on completion of the initial assessment period of two years, the applicant would still be eligible for grant of service element of disability pension in accordance with the Regulation 186(2) of the Pension Regulation for the Army, 1961.

13. In view of the foregoing, the OA is partly allowed and the applicant is held eligible for grant of disability pension for two years from the date of his discharge, i.e. from 01.09.1991 and for service element of disability pension with effect from two years after the date of his discharge, i.e. from 01.09.1993. It is, however, made clear that arrears would be restricted to a period of 3 (three) years prior to the date of filing of the OA, i.e. 17.10.2016, in keeping with the principles enunciated by the Hon`ble Apex Court in **Union of India And Others Vs. Tarsem Singh (2008) 8 SCC 648.** The respondents are directed to pay the applicant, service element of disability pension with arrears as restricted above, within a period of 4 (four) months from the date of receipt of a copy of this order, failing which the amount would carry simple interest @ 9% per annum.

14. There will be no order as to costs.

15. The learned Counsel for the respondents made an oral prayer for leave to appeal under Section 31(1) of the Armed Forces Act, 2007 before the Hon`ble Apex Court, which, however, is rejected on the ground that the order does not involve any question of law having general public importance.

16. Order dasti.

MEMBER(A) **MEMBER (J)**

Nath.