

ARMED FORCES TRIBUNAL
REGIONAL BENCH
GUWAHATI
(Through Video-conferencing)

OA 03 of 2020 WITH MA 02 of 2020

Ex Sep WS Ringlung Anal ... Applicant
Versus
Union of India & Ors. ... Respondent

For applicant : **Mr. A R Tahbildar, Advocate**
For the Respondents: **Mr. B Kumar, Advocate**

CORAM:
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN PM HARIZ, MEMBER(A)

ORDER
15.05.2023

Vide separate detailed order passed today, OA stands allowed.

Learned counsel for the respondents makes an oral prayer for grant of leave to appeal for impugning the aforesaid order before the Hon'ble Supreme Court. However, there being no point of law, much less any point of law of general public importance involved in the order, which warrants grant of leave to appeal, the oral prayer is declined.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN P.M. HARIZ)
MEMBER(A)

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ORDER

1. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, who is aggrieved by the rejection of his claim disability element of pension by the respondents vide communication dated 14.05.1997.

2. The applicant was enrolled in the Army on 13.03.1979 in SHAPE-1 and was invalided out of service on 20.06.1987 under Army Rule 13(3) III (iii) after rendering 8 years, 3 months and 15 days of service. At the time of discharge, he was placed in low medical category BEE (P) by the release medical board held on 10.03.1987 with the degree of disability at 20% for two years and aggravated by

military service. The applicant was however, granted disability pension for five years from 21.06.1987 to 09.03.1992 vide PPO No. D/3002/87 dated 01.09.1987. The Re-Survey Medical Board held on 11.02.1992 placed the applicant in the same medical category but assessed the disability as nil for life. The PCDA(P), Allahabad in consultation with the medical advisor held the disability percentage at nil for 5 years vide letter dated 27.07.1992. Thereafter, another Re-Survey Medical Board was held on 24.12.1996 which assessed the applicant's disability at 20% for five years. However, PCDA(P), Allahabad vide letter dated 14.05.1997 held that applicant's disability as Nil% for life, hence he was not entitled to disability pension. The applicant submitted his first appeal before the appellate authority on 11.06.2019 which was rejected vide letter dated 17.10.2019 stating that the appeal was time barred.

3. Learned Counsel for the applicant submitted that the applicant's case was duly recommended as attributable to by military service by the RMB but the same was rejected by the PCDA, Allahabad. The medical officer in the PCDA (P) Allahabad who has never examined the patient cannot overrule the recommendation of a duly constituted RMB. Further, the counsel submitted that as per Para 173 of Pension Regulations for the Army- 1961 (Part-1),

disability pension consisting of service element and disability element may be granted to an individual who is invalided out from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 percent or above. In the instant case, the degree of disability was assessed at 20% and held as attributable to military service by the duly constituted RMB. Therefore, the applicant is entitled to disability pension.

4. Per contra, Learned Counsel for the respondents submitted that the disability pension claim of the applicant was rejected by PCDA(P) vide their letter No G3/RA/2197/3402/V dated 14.05.1997. According to MoD 1(3)/2008/D(Pen/Pol) dated 17.05.2016, the time limit for filing appeals for all type of family pension and disability/war injury pension/ element in respect of officers and PBOR is not more than five years. In the case at hand, the first appeal was preferred by the applicant on 15.04.2019, after a prolonged period of 32 years which was, therefore, rejected on 17.10.2019 on the ground of the appeal being time barred. Hence, the disability pension claim of the individual is not tenable.

5. Having heard the rival submissions and perused the records, including the RMB and the RSMB proceedings, the only issue to be

decided is whether the disability of the applicant could be held attributable to or aggravated by military service. If yes, then from which date?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of **Dharamvir Singh Versus Union of India & Others** reported in (2013) 7 SCC 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words-

"29.1. Disability pension to be granted to an individual who is invalided from 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 to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his

subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee). the corollary is that onus of proof that the condition for non-entitlement is with the employer A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)].

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)]

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the

reasons (Rule 14(b)), and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions). 2002. "Entitlement General Principles, including Paras 7, 8 and 9 as referred to above (para 27).

7. Moreover, as per Para 7 of Govt. of India letter No.1(2)/97/D(Pen-C) dated 07.02.2001, there will be no periodical reviews by the RSMB for re-assessment of disabilities. In cases of disabilities adjudicated as being of a permanent nature, the decision once arrived at will be final and for life, unless the individual himself request for a review. In the instant case, RSMB dated 24.12.1996 assessed the disability of the applicant @ 20% for 5 years but as the disability is permanent in nature, it will be will be treated as final and for life.

8. As far as the benefit of broad banding is concerned, it was introduced in January 2001 and stands extended w.e.f. 01.01.1996. Since the RSMB dated 24.12.1996 has held that the disability of the applicant at 20%, the applicant is entitled to broad banding for life from the date his disability was assessed at 20% and held as aggravated by military service by the RSMB, i.e., 24.12.1996

9. In view of the above, the OA is allowed. The disability of the applicant is held as aggravated by military service. The applicant is entitled to get disability pension @20% for life to be rounded off to 50% from 24.12.1996. However, in view of the law laid down in **Union of India and Ors. Vs. Tarsem Singh** [2009 (1) AISLJ 371], arrears will be restricted to three years prior to the date of filing of this OA, i.e., 17.01.2020.

10. The respondents are thus directed to calculate, sanction and issue the necessary corrigendum PPO to the applicant within three months from the date of receipt of a certified copy of this order, failing which the respondents shall be liable to pay interest @ 6% per annum till the date of actual payment.

11. No order as to costs.

Pending miscellaneous application(s), if any, stands disposed of.

Pronounced in the open Court on this day of __15th__ May, 2023.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

**(LT GEN P.M. HARIZ)
MEMBER(A)**

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