

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

OA-13/2016

P R E S E N T

**HON'BLE MR. JUSTICE B.P. KATAKEY,
OFFICIATING CHAIRPERSON**

HON'BLE LT GEN SANJIV LANGER, MEMBER (A)

**JC-548241A Ex Sub
Konok Kumar Sonar
S/O.Prabhat Kumar Sonar
Vill Kuli dharna
PO Happy Valley
Dist. East Khasi Hills,
Meghalaya Pin 793007.**

..... Applicant

Legal practitioner for the applicant

Ms Rita Devi

Mr A.R.Tahbildar

- Versus -

1. Union of India
Through its Secretary
Ministry of Defence, Sena Bhawan,
New Delhi -110105.
- 2.Chief Records Officer, Records, The Assam
Regiment, PIN (Army) -900332,C/O.99APO
3. Additional Directorate General, Personnel
Services PS-4(d), Adjutant General's Branch,
Integrated HQ of MOD (Army)
DHQ,PO New Delhi-110011.

4. Senior Accounts Officer, PCDA(P),Allahabad 21.
5. Commanding Officer, Assam Regiment
C/O. 99 APO.

..... Respondents
**Legal practitioner for the
Respondents**
(Retd) N.Deka,CGSC Brig

Date of Hearing : 18.07.2016
Date of Judgment & Order : 26.08.2016

ORDER

(Justice B.P. Katakey)

1. This OA is directed against the order dated 29.02.2008 passed by the Chief Records Officer, for Officer Incharge Records, Assam Regiment (Respondent No.2), rejecting the second appeal filed by the applicant for payment of disability pension on the ground that "RETINAL VASCULITIS BOTH EYES" has been assessed at less than 20% i.e. 15-19 % for life and hence, he is not entitled to disability pension as per Rules.
2. The facts leading to filing of the OA are that the applicant was enrolled in the Army on 2nd February, 1976. He was subsequently posted to 5 Assam Regiment on 22.09.1976. The applicant while travelling from New Jalpaiguri to Guwahati on 06.02.2002 by Kanchanjungha Express on official duty, the said train met with an accident as a result of which the applicant received injuries in his

head. The applicant, thereafter, on his return was treated in the Unit MI Room on 7.2.2002, and then was referred to 171 Military Hospital and 158 Base Hospital where from he was again referred to Army R.R.Hospital, New Delhi. The applicant was discharged from the said hospital on 26.2.2003 and returned to his duties on 06.03.2003. A Court of Inquiry was also held to investigate the circumstances under which the applicant had suffered the injuries. The Court of Inquiry submitted its finding that the applicant sustained injuries in his head in the railway accident which resulted in complications, in both his eyes, requiring him to undergo treatment in different hospitals. The Court of Inquiry recorded the finding that while the applicant was proceeding for temporary duty to Guwahati on 06.02.2002, from Newjalpaiguri, on his return journey, the train in which he was traveling collided with a goods train at Kamakhya Rly Station at about 2000 hours on 6.2.2002, and as a result of which he suffered injuries on the left side of his head. Further a finding has also been recorded that the injury sustained by him is attributable to and aggravated by military service, and he is not to be blamed for the said injuries. In the Army R.R.Hospital, New Delhi, the applicant was again admitted on 18.8.2002 and was diagnosed with "RETINAL VASCULITIS BOTH EYES" and categorized as Low Medical Category E-2 (Permanent) w.e.f. March, 2003 by the Medical Board. The Release Medical Board in its proceedings dated 26.4.2004 also has found the disability of the applicant as "RETINAL VASCULITIS BOTH EYES", which was attributable to military service and the percentage of disablement was recorded as less than 20% [(15% -19 %) Permanent]. The applicant,

thereafter, was released from service on 1.10.2004 on completion of his terms of engagement. The applicant on his discharge from service filed an application praying for grant of disability pension, which has not been paid to him though service pension was granted to him vide PPO No.1562004. The request of the applicant for grant of disability pension has been rejected by the PCDA (A) on 8.11.2004 on the ground that his percentage of disability was assessed less than 20% by the Release Medical Board. The applicant, thereafter, preferred an appeal on 08.05.2005 against the rejection of his claim for disability pension which was also rejected on 22.02.2007 on the same ground. On the basis of the second appeal preferred by the applicant on 30.04.2007, the Ministry of Defence, Govt. of India, in consultation with DGAFMS decided to examine the applicant by the Appeal Medical Board and accordingly, he was examined on 30.11.2007 . The Appeal Medical Board has also opined that the applicant has been suffering from "RETINAL VASCULITIS BOTH EYES" which is attributable to military service and such disability is permanent for life. The percentage of disability was also recorded as between 15%-19% (Permanent), by pasting a small sheet of paper without the signature of any of the Medical Officers, constituting the Appeal Medical Board, on such pasted portion.

3. We have heard Ms.Rita Devi, learned counsel for the applicant and Brig (Retd) N.Deka, learned CGSC appearing for the respondents.

4. The learned counsel for the applicant referring to the impugned order dated 29.2.2008, whereby and whereunder the claim of the applicant for grant of disability pension has been rejected on the ground that disability has been assessed as less than 20%, has submitted that the applicant has been denied the disability pension solely on the ground that the Release Medical Board has found the percentage of the applicant's disability between 15-19%, without recording any reason therefor. The learned counsel submits that a cogent and convincing reason is required to be recorded by the Release Medical Board for assessing the disability at less than 20%, as the individual is deprived from disability pension because of such assessment of percentage of disability. Referring to the Appeal Medical Board proceedings, which has been annexed by the respondents in the counter affidavit filed, it has also been submitted that it is apparent therefrom, that the said proceeding has been interpolated by the respondents by pasting a sheet giving reason for forming the opinion relating to the percentage of disability which does not bear the signature of any of the Medical Officers examining the applicant. The learned counsel, therefore, submits that the reason sought to be given in the Appeal Medical Board, also cannot be accepted. The learned counsel hence, submits that there being no reason for forming the opinion relating the percentage of disablement as 15%-19 % for life, the applicant cannot be denied disability pension.

5. The learned counsel for the respondents on the other hand referring to the Release Medical Board as well as the Appeal Medical

Board proceedings has submitted that since the percentage of disablement of the applicant was found to be less than 20% for life, he is not entitled to disability pension though such disability was found to be attributable to military service. The learned counsel further submits that though the Release Medical Board did not cite any reason for forming the opinion relating to the percentage of disablement, the Appeal Medical Board in its proceeding has cited the reason for forming an opinion relating to percentage of disablement, as distant vision of both eyes were found to be 6/6 and 6/12. The learned counsel, therefore, submits that the claim of the applicant for disability pension has rightly been rejected by the Respondents.

6. The arguments advanced by the learned counsel for the parties received our due consideration. We have also perused the pleadings of the parties and the records of the Release Medical Board and the Appeal Medical Board proceedings.

7. Undisputed facts as narrated above are the applicant has been discharged from service on completion of tenure of engagement on 1.10.2004. While the applicant was serving, he suffered from disability "RETINAL VASCULITIS BOTH EYES" in December 2002, because of the head injuries sustained by him in a train accident occurred on 06.02.2002. Both the Court of Inquiry as well as Release Medical Board has found the injury attributable to military service. The Release Medical Board, however, has assessed the percentage of disability between 15%-19% for life i.e. less than 20%. No reason whatsoever, has been recorded by the Release Medical Board in

forming the opinion relating to percentage of disablement. The Appeal Medical Board, which has been constituted to examine the applicant pursuant to the decision of the Ministry of Defence, Govt. of India, has also found the same disablement for which the applicant was found to have been suffering from, by the Release Medical Board. The percentage of disablement was also recorded as between 15%-19 % by the Appeal Medical Board, computation being less than 20%, the applicant was not granted the disability pension.

8. In the Appeal Medical Board proceedings, as is evident from the records produced by the respondents, have certain interpolations relating to the reason given for forming the opinion with regard to the percentage of disablement. It is evident from the said records that a small sheet has been pasted giving reason for assessment of the percentage of disability, i.e. applicant's distant vision being 6 / 6 and 6 / 12. The said extra sheet pasted on the form does not bear the signature or initial of any of the Medical Officers constituting the Medical Board. Similarly, another extra sheet has been pasted in column 8 of Page 6 of the said Medical Board proceedings, to the effect that the appeal has been rejected due to a less than 20% assessment. The said pasted portion also does not have the signature or initial of any of the Officers constituting the Medical Board. The doubt relating to pasting of reasons is fortified further by the fact that while other parameters and information were written by hand by the Appeal Medical Board, in the format, the reason and the order for rejection are typed written and pasted. It is also not possible for the Tribunal to ascertain as to whether any reason was earlier recorded by the

Appellate Medical Board, over which the small slip has been pasted in the place assigned for giving the opinion, thereby covering the opinion already recorded, which in turn may be different from the opinion, if any, originally given by the Appellate Medical Board.

9. An individual who is discharged from service on completion of normal tenure is not being granted disability pension, if the percentage of disablement is found to be between 15%-19 %, i.e. less than 20%. The difference between the entitlement and disentanglement of disability pension, therefore, in a given case, is one percentage. While an individual whose percentage of disablement has been assessed at 19%, he would not be entitled to disability pension, but if the percentage of disablement is assessed as 20%, he will be entitled to disability pension. The difference being meager, for depriving an individual from the benefit of disability pension, convincing reasons, reason, therefore, are required to be recorded by the Release Medical Board; as depending on its opinion, an individual would either get or be deprived from disability pension. In the instant case, the applicant admittedly had suffered from disablement while on duty and his disablement was certified to be attributable to military service. The Release Medical Board, however, has assessed the percentage of disablement between 15%-19%, without recording any reason therefor. The reason for forming an opinion relating to percentage of disablement by the Appeal Medical Board, as discussed above was subsequently pasted over which amounts to interpolation of medical records, without the signature or initial of any of the Members constituting the Medical Board (authentication), which in turn denies

the applicant from the benefit of disability pension. The reason subsequently pasted for forming the opinion relating to percentage of disablement, therefore, cannot be accepted.

10. In view of the above, we are of the considered opinion that the applicant cannot be denied disability pension as has been done by the respondents. Hence, the impugned decision of the respondent authority and the impugned order dated 29.2.2008 are set aside. The Respondents are directed to grant the disability element of pension to the applicant (at the rate of 20%, broad banded to 50% based on the MoD Circular dated 31.01.2001, and Hon'ble Supreme Court of India decision in Govt. of India Vs. Ram Avatar (Civil Appeal 418 of 2012) delivered on 10th December, 2014), the arrear of which, however, is restricted to three years preceding the date of filing of the OA (OA is filed on 29.3.2016). The arrear shall carry interest @ 9% per annum from the aforesaid date till the date of payment. The Respondents are further directed to pay the arrear with interest within 3 (three) months from today.

10. The OA is accordingly allowed. No costs.

MEMBER (A)

OFFICIATING CHAIRPERSON

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