

**ARMED FORCES TRIBUNAL**  
**REGIONAL BENCH**  
**GUWAHATI**  
**(Through Video-conferencing)**  
**OA 18 of 2021 WITH MA 12 of 2021**

Ex-Hony Nb Sub Uttam Chandra Medhi ... Applicant  
Versus  
Union of India & Ors. ... Respondent

For applicant :Mr. B. Pathak, Advocate  
For the Respondents: Ms. Deepanjali Bora, 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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**For applicant**                   **:**     **Mr. B. Pathak, Advocate**  
**For the Respondents:**       **Ms. Deepanjali Bora, Advocate**

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

**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 impugned order dated 27.03.1997.

2. The applicant was enrolled in the Army on 01.05.1972 and discharged from service on 30.04.1996 under Army Rule 13 (3) (1) after rendering 24 years of service on completion of service tenure and being placed in low medical category CEE (Permanent). At the time of discharge, the individual was placed in low medical category CEE (Permanent) and his disability was diagnosed as "PIVD L4-5

AND DISC BULGE L3-4, L4-5, (724(C))". The release medical board was held on 25.04.1996 (**Annexure-1**) which after physical examination of the applicant had assessed the applicant's disability @30% for two years and held the disease to be aggravated by the stress and strain of military service. Disability Pension claim in respect of the petitioner was processed to PCDA (P), Allahabad. Accordingly, PCDA (P), Allahabad admitted service pension of the petitioner but disability pension claim was rejected vide their letter No G3/70/21/2/97 dated 27.03.1997 (**Annexure-3**) on the ground that that disease of the petitioner was "Neither Attributable to Nor Aggravated by Military Service" and was "constitutional in nature and not related to service" and assessed @ 11-14%; less than 20%. Hence this petition.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contracted during the service, hence it was attributable to and aggravated by military service. The applicant's case was duly recommended as aggravated by military service by the RMB but the same was

rejected by PCDA, Allahabad. The Counsel further submitted that, the medical officer in the PCDA (P) Allahabad who had never examined the patient cannot modify the recommendation of a duly constituted RMB. Moreover, the disability of an individual can't be assessed in two different parameters for two different purposes, i.e., the disability as a major one making him unfit to be retained in service and the same to be a minor one deny him the disability element of pension. Such a contradictory stand of the authorities was not only violative of fundamental rights of the individual but was also contrary to relevant provisions of law and therefore needs intervention of this Hon'ble Tribunal.

4. Per contra, Learned Counsel for the respondents 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. But the petitioner has not been invalided out but discharged from service under Army Rule 13 (3) III (i). At the time of discharge, the petitioner was placed in Low Medical Category CEE (Permanent) for diagnosis "PIVD L4-5 AND DISC BULGE L3-4, L4-5, (724(C))" and

his disability was rejected by PCDA (P), Allahabad with concurrence of Medical Advisor (Pension) vide their letter No G-3/70/21/2/97 dated 27.03.1997 Hence, Petitioner was not entitled for disability element of pension.

5. Having heard both the sides at length, the only issue to be decided is whether the disability of the applicant could be held attributable to or aggravated by military service and broad banded to 50 percent. 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. Therefore, benefit of doubt in these circumstances should be given to the applicant in view of the law settled on this matter by Dharamvir Singh vs Union of India & Ors (supra) and the disability of the applicant should be considered as aggravated by military service, as such the applicant is entitled for the disability pension for two years from the date of his discharge. Although, the applicant has been discharged in low medical category CEE (Permanent) and Para 7 of letter dated 07.02.2001 makes it clear that in cases of disability being permanent in nature, the decision once arrived at will be final and for life unless the individual himself requests for a review. But the benefits of this letter cannot be given to the applicant in the present case as para 2 (h) of Part III of the RMB clearly stated that the applicant was advised operation to improve his condition which was not agreed to by the applicant. Therefore, the opinion of the duly constituted RMB of granting disability @30% for two years cannot be substituted to grant the applicant disability element for life.

8. As for as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996.

Hence, the applicant is entitled to broad banding for period of two years from the date of discharge i.e. 01.05.1996

9. In view of the above, the Original Application is allowed. The disability of the applicant is held as aggravated by military service. The applicant is entitled to get disability pension @30% for two years to be rounded off to 50% from the date of discharge. Respondents are further directed to give effect to the order within three months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 6% per annum till the date of actual payment.

10. No order as to costs.

Pronounced in open Court on this 15<sup>th</sup> day of May, 2023.

**(JUSTICE RAJENDRA MENON)  
CHAIRPERSON**

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

Ashok