

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

OA - 54 of 2017

PRESENT

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

Es-Sep Jamkho Thang
Vill-Sahomphal
PO- Sugnu
Dist-Chandel, Manipur
Pin -795101

..... Applicant

By legal practitioners for
Applicant.

Mrs. Rita Devi
Mr. A.R.Tahbildar

-VERSUS-

- 1. The Union of India represented by**
the Secretary, Ministry of Defence,
Sena Bhawan, New Delhi
- 2. The ASC Records (South)**
PIN-900493
C/o 56 APO
- 3. The Additional Director General**
Personnel Services, PS-4(d)
Adjutant General's Branch
IHQ- Of MOD (Army), DHQ,
P.O. 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 : 19.12.2018
Date of Judgment & order : 21.12.2018

JUDGMENT & ORDER

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

1. This is an application filed under Section 14 of the AFT Act, 2007 against denial of disability pension.
2. The fact of the case is that the applicant was enrolled in the Indian Army on 15.09.1969 and was invalidated out of service with effect from 24.09.1974 for disability "OSGOOD SCHLATTER'S DISEASE RT KNEE". The invalidating Medical Board (IMB) held on 31.8.1974 assessed the disease is neither attributable to nor aggravated by military service being constitutional in nature and the percentage of disablement of the applicant due to the disability was assessed as 30% for 2 years. As per the policy prevailing at that point of time, the applicant preferred the disability pension claim which was sent to the CDMA (pension), Allahabad for grant of disability pension claim in consultation with the Medical Advisor (Pension). He was granted temporary disability pension of Rs. 40.00 (Rupees forty) only per month with effect from 25.09.1974 to 30.08.1976 and service element of Rs. 40.00 (Rupees forty) only per month with effect from 31.08.1975 for life vide Controller of Defence Accounts (Pension) Allahabad PPO No. D/721/75.
3. Subsequently, the applicant was asked to report to the Military Hospital, Shillong for Re-Survey Medical Board which was arranged at 151 Base Hospital vide letter No. 1444/Stats/76/162 dated 02.06.1976. But the applicant did not report to the Base Hospital and had submitted unwillingness certificate on 28.05.1992 because his house being burnt due to the Naga Kuki conflict in his village.
4. In our earlier order dated 11.06.2018 we had directed the applicant to report MH (Leimakhong, Manipur) *between* 1st and 15th July, 2018 for Re-Survey Medical Board (RSMB). The RSMB was conducted on

27.07.2018 and the proceedings have been submitted before us wherein it is very clearly stated that RSMB has accepted the disablement at 30% for life long. As the disability was earlier considered as "aggravated by service" by Medical Advisor of CDP, Allahabad, it would continue to remain unchanged.

5. Hence the applicant would be entitled to disability element of disability pension from 3 years prior to filing of the appeal i.e. 28th December, 2017 @ 30% (rounded off to 50%). The payment of arrears will be made within a period of 2 months from the date of receipt of this order, failing which a simple interest of @9% on arrears will be levied.

6.. A copy of the order be given to both the sides after observing usual formalities.

7. No order as to cost.

8. The OA is accordingly allowed.

MEMBER(A)

MEMBER(J)

Mdb