

IN THE ARMED FORCES TRIBUNAL**REGIONAL BENCH, GUWAHATI****OA- 37/2016.****PRESENT****HON`BLE MR. JUSTICE B.P.KATAKEY,
OFFICIATING CHAIRPERSON
HON`BLE LT GEN S.K.SINGH, MEMBER (A)****No.4352498x Ex. Nk Paokhosei Kuki
Village Ukonhing Khangphai
Post Office Sugnu, Police Station
Sugnu, District Chandel, State of Manipur
Pin 795101****..... Applicant.****By legal practitioners for
Applicant.****Mr Tapam Deori****-VERSUS-**

- 1. Union of India,
Represented by the Secretary,
Govt. of India, Ministry of Defence (MoD),
South Block, New Delhi – 110011.**
- 2. Principal Controller of Defence Accounts(Pensions),
Draupadi Ghat, Allahabad-211014.**
- 3. Commanding Officer 5 Assam Regimental Centre
Shillong C/O. 99 APO**
- 4. Record Officer for Officer in charge Records, The Assam
Regiment PIN (Army) 900332.**

..... Respondents..

**By Legal Practitioner for the
Respondents**

Brig N.Deka (Retd.), CGSC

Date of Hearing : 08.11.2016

Date of Order : 08.11.2016

ORDER

(B.P.Katakey,J)

The applicant, who was a Naik in the Indian Army, has filed this application praying for a direction to the respondent authorities to grant disability pension, contending, inter alia that though the Release Medical Board has found that the applicant at the time of his release from service was suffering from STAGHORN CALCULUS RT WITH ECTOPIC KIDNEY RT (V-67), the percentage of which was found to be 30, and the same was found to be attributable to military service, the PCDA authorities by the impugned orders dated 28.06.2002 has rejected the claim on the ground that the Medical Adviser (Pension) attached to the PCDA did not consider the said disability as neither attributable to nor aggravated by the military service. It is the contention of the applicant that PCDA has no authority to reject the claim of disability pension when the Release Medical Board has certified the same, which has been accepted by the appropriate authority.

[2] We have heard Mr.T,Deori, learned counsel for the applicant and Mr. C.Baruah, learned CGSC appearing for the respondents.

[3] The learned counsel appearing the applicant on the basis of the aforesaid contention has submitted that the respondents may be directed to pay disability pension @ 30% with rounding off benefit to 50% in view of Govt. of India decision dated 31.01.2001 and the judgment passed by the Hon'ble Supreme Court on 10.12.2014 in the case of Union of India Vs. Ramavatar.

[4] Learned counsel appearing for the respondents on the other hand has submitted that since the PCDA, in consultation with the Medical Adviser (Pension), has come to the finding that the disability from which the applicant suffering from was neither attributable to nor aggravated by military service, the prayer of the applicant for disability pension has been denied. It has also been contented that even assuming but not admitting that the applicant is entitled to disability pension, the benefit of rounding off would not be available to him as per the policy decision dated 31.1.2001, he being not invalidated out from service. It has also been submitted that against the order rejecting the claim of the applicant, no further appeal has been filed.

[5] The submissions advanced by the learned counsel have been received our due consideration. We have also perused the records produced by the respondents.

[6] It is not in dispute that the applicant was discharged from service on completion of his tenure of engagement on 28.02.2002. The Release Medical Board has found that the applicant was suffering from STAGHORN CALCULUS RT WITH ECTOPIC KIDNEY RT (V-67), the percentage of which was found to be 30. It has also been found that such disability was aggravated by the Military service. The said opinion of the Release Medical Board has been duly accepted by the concerned authority. The PCDA, however, has rejected the claim of the application for disability pension on the ground that the Medical Expert attached to the said PCDA did not find disability neither attributable to nor aggravated by military service.

[7] This Tribunal has already held that PCDA has no authority to reject the Medical Board Proceedings and the decision taken by the respondent authorities on such Medical Board proceedings.

[8] That being the position, the decision of the PCDA not to grant disability element of pension to the applicant, cannot stand the scrutiny of law, which is, therefore, set aside.

[9] This leads to determination of question as to whether the applicant is entitled to the benefit of rounding off the disability element of pension. The Hon'ble Supreme Court in Ramavatar (supra) has held that the benefit of the Govt. of India policy dated 31.1.2001 is also available to the persons who were superannuated from service as well as the premature retiree. That being the position, the applicant who has superannuated from service is also entitled to the benefit of board banding disability element of pension. The applicant would, therefore, be entitled to 50% of the disability element of pension.

[10] In view of the aforesaid discussion, we allow the OA directing the Respondents to grant the disability element of disability pension to the applicant @ 50% with arrear for a period of 3 years preceding the date of filing of the OA (OA filed on 21.09.2016). The arrear would carry interest @ 9% per annum from the aforesaid date till the date of payment. The arrear along with interest shall be paid to the applicant within a period of four months from the date of receipt of a copy of this order.

[11] OA is accordingly allowed. No costs.

[12) Mr. C.Baruah, learned CGSC appearing for the respondents has made an oral prayer to grant leave to appeal to Hon'ble Supreme Court. Since the order does not involve any question of law having general public importance, the prayer for leave to appeal to the Hon'ble Supreme Court stands rejected.

MEMBER(A)

OFFICIATING CHAIRPERSON

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