

36

ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI

ORIGINAL APPLICATION NO.17OF 2024

WITH

MISC. APPLICATION NO. 15 OF 2024

No. 4346670 X Ex Nk Lalzathang]
Vill- Elimveng New Lqamka, PO-Churachandpur,]
Dist.-Churachandpur, Manipur.].. Applicant

Versus

1. The Union of India]
Represented by the Secretary,]
Ministry of Defence, Sena Bhawan,]
New Delhi – 11.]
2. The Officer-in-Charge]
Records The Assam Regiment,]
PIN-900332, C/o 99 APO.]
3. Additional Directorate General]
Personnel Services, PS-4(d),]
Adjutant General's Branch,]
IHQ of MoD (Army), DHQ,]
PO-New Delhi.]
4. The Principal Controller of Defence]
Accounts (Pension), Allahabad,]
Pin-211 014, Uttar Pradesh.]..Respondents.

.....
Mr. AR Tahbildar, Advocate for the Applicant.

Mr. PJ Barman, Central Govt. Pleader for the Respondents.
.....

**CORAM : SHAIENDRA SHUKLA, MEMBER (J) AND
LT GEN C. P. MOHANTY, MEMBER (A)**

JUDGMENT RESERVED ON : 19.02.2025

JUDGMENT PRONOUNCED ON : 21.02.2025

JUDGMENT (Per Shailendra Shukla, Member (J))

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs :-

“a) To quash and set aside the impugned order No 4030/4346670 X/Legal Cell dated 01.04.2023 passed by the Senior Record Officer, The Assam Regiment wherein and whereby applicant's representation claiming disability element of disability pension was rejected.

b) To direct the authorities to pay disability element of pension considering disability as 30% rounded off to 50% with arrears and interest thereon w.e.f. three years prior to the date of filing of the OA claiming disability element of pension.”

MA No.15/2024

2. This application has been filed for seeking condonation of delay of 6 months and 17 days in filing the OA.

3. Keeping in view the averments made in the application and in the light of the decision in **Union of India and Ors. Vs. Tarsem Singh**, (2009 (1) AISLJ 371), the delay in filing the OA is condoned.

4. Misc. Application No. 15 of 2024 stands disposed of.

OA No. 17/2024

5. Facts of the case of the applicant are that the applicant was enrolled as Sepoy in the Army on 22.06.1973. In the due course, he was promoted to the rank of Naik. During the service period of about 16 years 10 months and 11 days, the applicant served in Peace, Field as well as High Altitude Areas efficiently. The applicant was diagnosed with “**Ventricular Ectopics**” while discharging duties at 305 Field Ambulance in Arunachal Pradesh in the year February, 1986 and was placed in Low Medical Category. Thereafter, the applicant continued discharging duties in Low Medical Category and in due course he was recommended to release from service. The Invaliding Medical Board held at Military Hospital, Shillong on 13.03.1990 assessed applicant’s disability at 6-10% for five years and opined the disability as neither attributable to nor aggravated by military service. In pursuance of the recommendation of the Medical Board for discharge of the applicant from service being in permanent Low Medical Category, the applicant was discharged from service in Medical Category BEE (P) w.e.f. 01.05.1990.

6. After discharge from service, though the applicant was granted service pension and other retiral benefits but the Principal Controller of Defence Accounts, Allahabad vide letter dated 03.01.1991 informed that the applicant

is not entitled to disability pension in terms of Regulation 173 of Pension Regulation for the Army, 1961, Part-1, since the disability "**Ventricular Ectopics**" is opined to be neither attributable to nor aggravated by Military Service by the Invaliding Medical Board.

7. Being aggrieved by the decision of the PCDA, the applicant preferred representation on 19.02.2017. The Senior Records Officer, Records The Assam Regiment vide letter dated 22.03.2017 intimated the applicant that he is not eligible for disability element as per Para 173 of Pension Regulation, 1961 and the same was informed to the applicant by the PCDA vide their letter dated 03.01.1991.

8. Thereafter, challenging the aforesaid order of rejection of disability element of pension, the applicant had filed OA 52/2017 but the same was disposed of directing the applicant to file First Appeal before the appropriate authority with a liberty to approach the Tribunal again.

9. Pursuant to the above order of AFT, Guwahati, the applicant submitted First Appeal before the authorities on 05.10.2019, however, the First Appeal was rejected by the Appellate Authority on 13.01.2020 stating that the disability is a form of disorder of cardiac rhythm and as such same is neither attributable to nor aggravated by military service in terms of Para 28 Chap VI of GMO 2002, amended 2008 and ER 2008.

10. Thereafter, the applicant, challenging the order dated 13.01.2020 of First Appellate Authority, had filed OA No. 10/2021. The Tribunal vide order dated 30.05.2022 directed the respondents' authority to hold a Re-survey Medical Board (RSMB) within three months from the date of receipt of the copy of the order and if the RSMB finds the applicant to be entitled for receipt of disability element of disability pension, then his case for grant of disability element of pension was directed to be processed in accordance with law.

11. In compliance of the Tribunal's order, the applicant was subjected to RSMB, wherein his degree of disability was assessed to 30% for life without giving any opinion on attributability or aggravation of the disability due to military service. On completion of RSMB, the applicant prayed for granting disability element of pension on 05.02.2023 and in response to his representation, Records the Assam Regiment vide letter dated 01.04.2023 informed the applicant that RSMB has assessed applicant's disability as 30% for life and the same is regarded as NANA by military service, therefore, the applicant does not fulfil the criteria for grant of disability element.

12. The applicant states that he has developed the disease due to stress and strain of military service, however, the authorities have arbitrarily opined the

disease to be neither attributable to nor aggravated by military service. Hence, the applicant filed the present OA.

13. On the other hand, learned counsel for the respondents submitted that the applicant was enrolled into the Army on 22.06.1973. The applicant was discharged from service on 30.04.1990 under Army Rule 13 (3) III (v) before fulfilling his terms engagement of service being placed in Low Medical Category BEE (Permanent). The applicant had rendered 16 years 10 months & eight days of service and granted service pension vide Pension Payment Order (PPO) No S/031570/1990 w.e.f. 01.05.1990 for life. Despite permanent medical category of the applicant, he was retained in service by granting sheltered appointment on the basis of his willingness certificate dated 01.05.1988 duly approved by Officer-in-Charge Records The Assam Regiment. Later, he submitted unwilling certificate to continue in service dated 13.09.1989 and therefore, his sheltered appointment was withdrawn. At the time of discharge, Release Medical Board dated 21.03.1990 opined his disease "**Ventricular Ectopics**" "neither attributable to nor aggravated by military service" with percentage of disability assessed @ 6-10% for five years. Disability Pension claim of the applicant was processed with PCDA (P), Allahabad vide Records The Assam Regiment letter dated 21.09.1990. However, PCDA (P), Allahabad rejected his disability pension claim vide

their letter dated 03.01.1991 as the disability of the applicant was "neither attributable to nor aggravated by military service" and assessed less than @ 20%. The same was communicated to the applicant vide Records The Assam Regiment letter dated 30.01.1991 with an advice to prefer an appeal against the decision within six months if he is not satisfied with the decision. However, the applicant failed to appeal against rejection of his disability pension claim within the stipulated period of six months.

14. Thereafter, An RTI application dated 25.05.2016 was submitted by the applicant with a request to provide ink signed/CTC copies of Release Medical Board proceedings (AFMSF-15), Pension Payment Order and PCDA (P), Allahabad letter under which his disability pension claim was rejected. Accordingly, all requisite documents were provided to the applicant vide Records The Assam Regiment letter dated 22.06.2016.

15. Further, the applicant approached Records The Assam Regiment through ESM Pension Grievance Cell c/o 57 Mtn Div Sig Regt vide their letter dated 21.02.2017, wherein it has been stated that the applicant is entitled for disability pension and also requested to check his eligibility for its grant. In response, Records The Assam Regiment vide letter dated 22.03.2017. Intimated to the applicant with a copy to ESM Pension Grievance Cell, HQ 57 Mtn Div Sig Regt that his disability pension claim was rejected

by Principal Controller of Defence Accounts (Pension), Allahabad vide their letter dated 03.01.1991 on the plea that his disability is "neither attributable to nor aggravated by military service" and assessed less than @ 20%.

16. Thereafter, the applicant filed MA No 45/2017 in OA No 52/2017 in the Armed Forces Tribunal (Regional Bench) Guwahati which was disposed off on directing him to file first appeal before the appropriate authority for redressal of grievances vide dated 11.09.2018. Whereas, Records The Assam Regiment also advised the applicant to prefer an first appeal to the Appellate Committee vide letter dated 20.09.2018.

17. Subsequently, applicant has submitted an undertaking certificate of delayed appeal for non-grant of disability pension dated Nil and preferred his first appeal dated 19.09.2018 against rejection of his disability pension claim alongwith detailed justification dated 02.10.2018. The same was forwarded to Adjutant General's Branch, Army Headquarters, New Delhi vide Records The Assam Regiment letter dated 30.01.2019. Additional Directorate Personnel Services, Adjutant General's Branch, Army Headquarters, New Delhi gave him the liberty to file first appeal before the appropriate authority and grant him time barred sanction for holding of Re-Assessment Medical Board (RAMB) vide their letter dated 27.02.2019. Documents for holding of Re-Assessment Medical Board in respect of the applicant were forwarded to 183

Military Hospital vide Records The Assam Regiment letter dated 28.03.2019 under intimation to the applicant. 183 Military Hospital vide their letter dated 24.04.2019 intimated the applicant to report at 183 Military Hospital Immediately for re-assessment of his disability. On re-assessment of his disability at 183 Military Hospital on 10.06.2019, the applicant was again placed in Low Medical Category SHAP2(P)E for diagnosis of "**Ventricular Ectopics**" w.e.f. 10.06.2019 and assessed his disability "neither attributable to nor aggravated by military service" with percentage assessed @ 6-10%.

18. Subsequently, an RTI application dated 11.08.2019 was forwarded by the applicant and asked to provide ink signed/CTC copies of RSMB held at 183 Military Hospital and copy of the decision given by the appellate authority on his first appeal. Accordingly, requisite documents were provided to the applicant vide Records The Assam Regiment letter dated 09.09.2019.

19. On 05.10.2019, the applicant submitted his first appeal against rejection of his disability pension claim and the same was forwarded to Adjutant General's Branch, Army Headquarters, New Delhi vide Records The Assam Regiment letter dated 15.11.2019. Additional Directorate General of Personnel Services/AGs Branch, Integrated Headquarters of Ministry of Defence (Army), New Delhi vide letter dated 13.01.2020 rejected first appeal as his disability was declared "neither attributable to nor aggravated by

military service" in terms of Para 28 of Chap VI of GMO 2002, amendment 2008 and Entitlement Rules for Casualty Awards to the Armed Forces Personnel 2008. Subsequently, Records The Assam Regiment intimated the applicant about his rejection of first appeal vide letter dated 04.02.2020 with an advice to prefer second appeal to Second Appellate Committee on Pension (SACP) through Record office within six months, if he is not satisfied with the decision of the First Appellate Committee.

20. Thereafter, the applicant again filed OA No 10/2021 in the Armed Forces Tribunal (Regional Bench), Guwahati. Accordingly, AFT (RB), Guwahati vide Order dated 30.05.2022 directed the respondent to hold Re-Survey Medical Board of the applicant and if he is found entitled to disability pension, his case shall be processed further in accordance with law". Whereas, in compliance with AFT (RB), Guwahati Order dated 30.05.2022, Re-Assessment Medical Board (AFMSF-17) dated 09.01.2023 of the applicant was carried out at 183 Military Hospital and medical authority assessed his disability "**Ventricular Ectopics**"@ 30% for life and declared "neither aggravated nor attributable to military service"

21. On thoroughly examination of the applicant's case in the light of para 173 of Pension Regulations for the Army 1961 (Part-1) and Para 53 (a) of Pension Regulations for the Army 2008 (Part-1), it is proved that applicant

does not fulfill the criteria for grant of disability pension. Hence, his disability pension claim was rejected on issuing a speaking order by Records The Assam Regiment vide letter dated 01.04.2023 and disposed off the case accordingly under the rule position.

22. Thereafter, again an RTI application dated 01.04.2023 was submitted by applicant with a request to provide Ink signed/CTC copies of Re-survey Medical Board and directions of Armed Forces Tribunal (Regional Bench) Guwahati for conducting of Re-Survey Medical Board. Accordingly, requisite documents were provided to the applicant vide Records The Assam Regiment letter dated 13.05.2023. Hence, the respondents prayed for dismissal of the OA.

23. We have heard learned counsel for the applicant as also learned counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are of two fold:-

- (a) Whether the disability of the applicant is attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled to disability pension?

Regarding Question (a)

24. The applicant was enrolled on 22.06.1973. He was diagnosed with disability of "Ventricular Ectopics" in February, 1986 when he was posted in Arunachal Pradesh as per Release Medical Board proceedings. A perusal of Medical Board proceedings (Annexure A) his service tenure right from 15.11.1974 till date of detection of disability has been FSCA (J & K, Assam, Nagaland and Arunachal Pradesh) all of which are field stations. The disability was detected more than a decade after he joined Armed Forces. Therefore, it is to be presumed that the disability occurring during service had causal connection with military service. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India & Ors**, (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 invalidated 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 be 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)]. [pic]*

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)."*

25. **The Hon'ble Supreme Court in the case of Union of India & Anr. Vs. Rajbir Singh in CA No. 2904 of 2011 judgment dated 13.02.2015 observed as under: -**

"16. Applying the above parameters to the cases at hand, we are of the view that each one of the respondents having been discharged from

service on account of medical disease/disability, the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. There is admittedly neither any note in the service records of the respondents at the time of their entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the member concerned was found to be suffering from could not have been detected at the time of his entry into service. The initial presumption that the respondents were all physically fit and free from any disease and in sound physical and mental condition at the time of their entry into service thus remains un rebutted. Since the disability has in each case been assessed at more than 20%, their claim to disability pension could not have been repudiated by the appellants."

26. The Medical Board has, however, stated in Annexure 'A' at internal page No.3 that the disorder is constitutional disorder and has nothing to do with service conditions. However, as already seen, the aforesaid disorder did not surface for more than a decade from the date of joining and it can only be concluded that the disability got aggravated due to conditions of military services which is apparent from the posting profile of the applicant. Hon'ble Supreme Court in the case of **Veer Pal Singh v. Secretary, Ministry of Defence**, (2013) 8 SCC 83 has held that although the opinion of the Medical

Board deserves respect, however, is not liable to be worshiped. In specific terms, the Apex Court has observed as under: -

“10. Although, the courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. What needs to be emphasised is that the opinion of the experts deserves respect and not worship and the courts and other judicial/quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release/discharge from the army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable.”

27. The disability of **“Ventricular Ectopics”** refers to abnormal heartbeats or heart rhythm. A look up in Google platform shows that in a normal heart condition electrical impulses start in a specialised area of heart tissue in the right Atrium through to the ventricles. However, a person suffering from ventricular ectopics, the electrical impulses start from the ventricles before those made by the atrium and causes heart to beat in different way. As far as the cause of **“Ventricular Ectopics”** is concerned, it has been shown that some time childhood developments, hormone changes, medication and lifestyle can also trigger ectopic beats.

28. Thus, it can be stated that a peculiar lifestyle in stressful condition may trigger aggravation of such condition. Thus, it is concluded that the disability of the applicant was attributable to or aggravated by military service.

29. As per Medical Board, the disability percentage of the applicant was 6-10% whereas for disability pension the minimum disability ought to be 20% as per Regulation 173 of Pension Regulations for the Army, 1961, Part-1.

30. It appears that after detection of the aforesaid disability, the applicant was to be in sheltered appointment at Shillong on the basis of his Willingness Certificate placed at Annexure 1 dated 01.05.1988. However, subsequently the applicant submitted Unwilling Certificate on 13.09.1989 (Annexure 2) and, therefore, sheltered appointment was withdrawn. Annexure-2 was perused. The recommendation of CG Unit in the aforesaid document shows that the applicant cannot be retained in the service for the public interest against the sheltered appointment on account of "**Ventricular Ectopics**". Thereafter, Invalid Medical Board proceedings have been carried out on 13.05.1990 vide Annexure-3. The above document, thus, clearly shows that the applicant was though given sheltered appointment but was, in fact, invalidated thereafter.

31. The Hon'ble Supreme Court in the case of **Sukhvinder Singh Vs. Union of India** in Civil Appeal No. 5605 of 2010 order dated 25.06.2014 has observed as under: -

"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."

32. In the case of **Sukhvinder Singh** (supra) also, the disability of the applicant was found to be 6-10% and he was invalided which is a case in the present matter as well.

33. Thus, as per the judgment, the applicant having been invalided out of military service would be presumed to be having minimum 20% disability attributable to military service and shall stand rounded off to 50%. Thus, the applicant shall be entitled to disability pension @ 20% rounded off to 50%.

34. In this matter, it appears that the applicant had earlier filed OA No. 10 of 2021 in which vide order dated 30.05.2022 had directed Re-survey Medical Board and RSMB was thereafter conducted wherein the applicant's disability was found to be 30%. That RSMB was conducted more than 38 years after the disability was first detected. The Hon'ble Supreme Court in the case of **Union of India Vs. Ex Sep R. Munusamy** in Civil Appeal No. 6536 of 2021 dated 19.07.2022, it has been held that the disability pension cannot be determined on the basis of medical examination conducted 20 years after discharge. As per Rule 8(a) of Entitled Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, a disease may be recognised attributable to service if it arises within 7 years from the date of discharge. The rule is reproduced as under: -

"8. Post discharge claims :

(a) Cases in which a disease was not present at the time of the member's retirement/discharge from service but arose within 7 years thereafter, may be recognized as attributable to service if it can be established by the competent medical authority that the disability is a

delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge.

(b)

35. Thus, we are not inclined to resort to RSMB opinion for the purpose of considering the extent of the disability of the applicant. However, as already stated earlier, the applicant is found to be entitled to disability element of the pension as claimed.

36. The OA is allowed in following terms:

(i) The applicant is entitled to disability element of pension @ 20% rounded off to 50%.

(ii) The applicant is also entitled to arrears of disability element of pension for a period of three years from the date of filing of the present OA. The OA was filed on 18.04.2024.

(iii) The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till the actual payment.

37. With this, Original Application No. 17 of 2024 stands disposed of along with all pending Misc. Applications.

38. No order as to costs.

(Lt Gen C. P. Mohanty)
Member (A)

Date -
Amk/-

(Justice Shailendra Shukla)
Member (J)