

**ARMED FORCES TRIBUNAL  
REGIONAL BENCH, GUWAHATI**

**OA-02/2024**

With MA-02/2024

**No.4361133K Ex Sep P. Puni  
Vill- Shajouba, P.O.-Tadubi  
Dist. Senapati, Manipur**

..... **Applicant**

By legal practitioners for Applicant  
**A R Tahbildar**

**-Versus-**

**1.The Union of India,  
Represented 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, P.O.-New Delhi**

**4. The Principal Controller of Defence  
Accounts (Pension), Allahabad, Pin-211014,  
Uttar Pradesh.**

..... **Respondents**

By legal practitioner for  
Respondents  
**Mrs. Dipanjali Bora, CGSC**

**CORAM :**

**HON`BLE MR. JUSTICE SHAIENDRA SHUKLA, MEMBER (J)  
HON`BLE LT GEN P GOPALAKRISHNA MENON, MEMBER (A)**

**ORDER (ORAL)**

**03.10.2024**

**(Shailendra Shukla, J)**

1. The applicant has filed the present OA under section 14 of Armed Forces Tribunal Act seeking to quash and set aside the communication dated 15.06.2023 issued by Records, the Assam Regiment, rejecting the applicant's claim for disability element of 50 % (rounded off to 75 %) and to direct the authorities to pay the disability element of pension of 30 % w.e.f. 20.10.2000 to 1.08.2003 and 50% (rounded off to 75 %) from 2.08.2003 onwards to the applicant with interest thereon.

2. The facts, as enumerated in short, are that the applicant was enrolled as Sepoy on 15.06.1989. During his service, he suffered from the disability of "other Non Organic Psychosis (298)" and was invalided out from service in Medical Category EEE (p) by the Invaliding Medical Board held on 20.10.1998 with the degree of disability 30 % for two years which was opined to be aggravated by Military service by the Invaliding Medical Board. The applicant was invalided out of from service with effect from 24.11.1998 under Army Rule 13 (3) item III(iii) and thereafter he was granted disability pension comprising of Service

Element for life and Disability element @ 30 % from 24.11.1998 to 19.10.2000.

3. On completion of 02 (two) years from the date of invalidment, though reassessment of applicant's disability was to be carried out by the authorities, same was not done by the authorities for the reasons best known to them. However, the applicant was called for reassessment of disability status before a Re-Survey Medical Board on 2.08.2003 of 5 Air Force Hospital. It was specifically opined in the RSMB proceeding that the applicant's disability persists and his disability is deteriorated due to natural progression. The degree of disability worsened due to natural progression and whole degree of disability was assessed at 50% for life. The applicant was thus required to be granted disability element of pension @ 50 % (rounded off to 75%). However, the authorities have arbitrarily granted him disability element @ 30 % (rounded off to 50 %) from the date of reassessment, i.e., 2.08.2003. The copies of Medical Board were not provided to the applicant and the applicant was under impression that he has been granted element of pension correctly as recommended by the medical board. However, during pension checking at an Ex-Servicemen Rally the applicant was advised to get the medical documents by filing applicant under RTI Act, 2005 and accordingly the applicant applied information through RTI and came to know that despite RSMB assessed his disability @ 50 % for life, the PCDA A(P), Allahabad had sanctioned disability only @ 30 % (rounded off to 50 %). On the application submitted by the applicant to the Records, the Assam Regiment praying to review his case, he was replied by the Records that

as per RSMB, final net assessment of disability was recorded @ 30 % for life and not 50 %. The applicant again made grievances before the concerned authorities which were again rejected.

4. The applicant submits that the RSMB clearly holding that there was 20 % natural progression, he was entitled to  $30 \% + 20 \% = 50 \%$  (rounded off to 75 %). However, PCDA granted disability element of only 30 % (rounded off to 50 %). On these grounds, the reliefs sought, have been claimed.

5. The respondents, however, submitted that natural progression of the disability was not aggravated by Military Service and therefore same could not be included for computing disability element and therefore the net assessment of disability is properly considered by RSMB as 30 %. PCDA (P), Allahabad has given its opinion only on the basis of the medical board proceeding and not on the basis of personally checking the individual. The applicant himself has caused delay in approaching the Tribunal and therefore he is not entitled for any relief for the period from 2003 onwards. On these grounds, the OA has been sought to be rejected.

6. The MA No. 2/2024 for delay condonation was considered. There is a delay of 19 years 4 months and 23 days which has been sought to be condoned on the ground that due to remoteness of the applicant's native village and adverse law and order situation owing to intense insurgency problems in the state of Manipur since long and also because of being in dark regarding correctness of pension until the

applicant received relevant documents in a Ex-Servicemen Rally, delay deserves to be condoned.

7. No written reply to the delay condonation application has been filed.

8. We have considered the submissions of both the learned Counsel and have perused the documents placed on record. The main question for consideration is (a) whether the application is barred by law of limitation and (b) whether the applicant is entitled to 20 % disability occurring due to natural progression of disease and thus entitled to disability element of 30 % + 20 % = 50 % (rounded off to 75 %).

9. The relief which has been sought is of enhancement of disability pension which relates to continuous wrong. In the case of **Union of India Vs. Tarsem Singh** (2008 (8) SC6 48), the Apex Court has held that in matters pertaining to disability pension, the alleged wrong is a continuous wrong and therefore, the cause of action gets renewed and the Tribunal is well within its right to condone the delay. Therefore, in view of the aforesaid, the delay deserves to be condoned and MA No. 2/2024 stands **allowed**.

10. The applicant had initially suffered from "other Non Organic Psychosis (298)" due to which he had been invalided out w.e.f. 24.11.1998. On perusal of RSMB dated 2.8.2003 placed at Annexure-C, shows that the disability has further deteriorated due to natural progression. The chart of assessment of disability has been prepared in Annexure C which is reproduced as under :-

| Disability                               | Whole Assessment            |                             | Part due to non-service factors | Worsening due to natural progress of the disability | Net assessment properly             | Duration of Assessment |
|--|-----------------------------|-----------------------------|---------------------------------|---|-------------------------------------|------------------------|
|  | Separate assessment         | Combined assessment         |                                 |   |                                     |                        |
| <b>OTHER NON ORGANIC PSYCHOSIS (298)</b> | <b>50 % (Fifty Percent)</b> | <b>50 % (Fifty percent)</b> | -                               | <b>20 % (twenty percent)</b>                        | <b>30 % (Thirty Percent)</b><br>@ @ | <b>PERMANENT</b>       |

11. From the perusal of the reply, it appears that after having been invalided w.e.f. 16.11.1998, the applicant's RSMB was carried out on 8.9.2003. He was earlier advised to appear on 19.10.2000. However, he could not appear for 2 years and 19 days and it was only on 8.9.2003 that he appeared before RSMB. Clearly, the applicant already invalided out could not have been stated to have aggravated his disability due to military service. The increase in percentage of disability was due to natural progression of the disease and cannot be considered to be a delayed manifestation of an already existing disease. The disease was already manifested, the applicant was invalided and the natural progression of the disease cannot be equated with delayed manifestation, as in the latter case, the applicant becomes entitled for disability pension. Had the applicant been retained in service after discovery of his disability and his disability had progressed thereafter, then, the same would have been considered to be aggravated by military service. However, as the matter stands, the applicant was not in military service and progression of the disability 5 years after the date of invalidment does not entitle him to enhanced disability pension, as the progression of the disease was not concerned with military service.

12. In view of the above, the applicant is not found to be entitled to disability pension of 50% rounded off to 75%. This OA consequently, stands rejected.

13. Regarding the prayer of the applicant for disability element of pension @ 30% w.e.f. 20.10.2000 to 01.08.2003 was also considered. The applicant at present has been granted disability element @ 30% from 24.11.1998 to 19.10.2000. Although there has been delay on the applicant's part to submit himself to RSMB on 01.08.2003 instead of on 19.10.2000, however it can safely be assumed that the applicant's condition had remained unchanged from 21.10.1998 and therefore applicant shall remain entitled to disability element of pension of 30% w.e.f. 21.10.2000 to 01.08.2003 (as claimed in the prayer clause).

14. The applicant submit that he has already been granted disability element of pension @ 30% (rounded off to 50%) from the date of Re-assessment i.e. from 02.08.2003. This shall remain as it is. In the final analysis, the OA stands disposed of as follows:-

(a) The prayer of applicant for awarding disability element of 50% (rounded off to 75%) stands rejected.

(b) The applicant shall be entitled to disability element of pension of 30% w.e.f. 21.10.2002 to 01.08.2003 (as prayed).

(c) The applicant shall be entitled to disability pension of 30% (rounded off to 50%) from the date of Re-assessment i.e. from 02.08.2003 onwards.

(d) The arrears of pension shall however be limited to 3 years prior to the date of filing of the present OA. The present OA was filed on 05.01.2024.

(e) Compliance of this order shall be made within a period of 4 months from the date of receipt of copy of this order. On failure to do so, interest of 8% shall be charged.

15. No order as to costs.

**(Lt Gen P.Gopalakrishna Menon)**  
**Member (A)**

**(Justice Shailendra Shukla)**  
**Member (J)**

*Mc/gm*