

ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI

O.A. No. 28 of 2023

CORUM

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

No.14912422k Ex-Hav
Bhanu Dev Roy,
S/O –Late Kali Mohan Deb Roy,
Ramkrishna Sarani, Nabapalli,
Katigram, P.O.- Rongpur,
Dist- Cachar, Assam,
PIN-788009

Applicant.
By legal practitioner
Mr.AR Tahbildar.

-Versus-

1. The Union of India,
Represented by the Secretary,
Ministry of Defence,
Sena Bhawan, New Delhi-1.
2. The Officer-in-Charge,
Records, Defence Security Crops,
Kunnur, State-Kerala,
PIN-670013, C/O-56 APO.
3. Additional Directorate General,
Personnel Service, PS-4(d),
Adjutant General's Branch,
IHQ of MOD(Army), DHQ,
P.O.-New Delhi.

By legal practitioner,
Mr. PJ Barman, CGSC

Date of hearing and order

: 03.10.2024

ORDER

BY MEMBER(J)

The applicant has filed the present OA under Section 14 of the Armed Forces Tribunal Act, 2007, seeking disability element of pension of @ 50% for life in terms of the composite assessment of 44% made by the Release Medical Board with arrear and interest thereon.

2. Facts of the case in short are that the applicant was enrolled in the Indian Army on 29.03.1984 after thorough medical examination. After rendering 17 years 03 days of service in the Army, he was retired from service w.e.f. 31.03.2001 in SHAPE-1. He was re-enrolled in Defence Security Corps (DSC) on 3.7.2002 and was subsequently invalidated out of service after rendering 17 years 02 months and 27 days of service w.e.f. 30.09.2019 in permanent Low Medical Category (P-2). While serving at Tenga, a Modified Field Area in the State of Arunachal Pradesh, the applicant was diagnosed with '*Primary Hypertension*' and '*Type-2 Diabetes Mellitus*' in the month of December, 2017 for the first time during Annual Medical Examination and was accordingly placed in Low Medical Category. He was subjected to Release Medical Board before his discharge and his disabilities were assessed at 30% for '*Primary Hypertension*' and 20% for '*Type-2 Diabetes Mellitus*'. The composite assessment of both the diseases was made 44% for life. After discharge from service he was granted service pension, but not disability element of pension. His claim for disability pension was rejected by the respondents and, therefore, he has filed the present OA seeking reliefs accordingly.

3. In the counter affidavit, it has been stated that the disability element of pension was neither attributable nor aggravated by military service and that the instant OA has been filed by the applicant more than 4 years after his discharge from DSC. Hence, this OA is barred by limitation and the same should be dismissed. It is further stated that OA is not maintainable as the First Appeal has not been decided.

4. We have heard learned counsel appearing for both the parties and perused the documents placed on record.

5. The question arises for consideration as to whether the applicant is entitled to disability element of pension or not?

6. Regarding the objection pertaining to maintainability of OA due to non-disposal of the First Appeal, the objection is liable to be rejected because the First Appeal was filed on 3.3.2023 and the present OA has been filed on 14.11.2023, well after expiry of six months from the date of filing of First Appeal. After final order is not passed within six months then as per Section 21(b) of Armed Forces Tribunal Act, 2007 the OA is liable to be admitted.

7. Annexure-B of the OA is the Medical Board Proceedings and particulars of disease/injuries is shown at internal page-3 of the aforesaid proceedings. On perusal of the same shows that state of Primary Hypertension occurred between December, 2017 to February, 2018 when the applicant was

posed at Tenga, Arunachal Pradesh. Type-2 Diabetes Mellitus also arose during the same period at Tenga. As per opinion of the Medical Board, both these disabilities occurred in modified field area and there is no close time relation with stress and strain of service and the applicant is not entitled to any disability pension. Percentage of disability is provided at internal page 8, as per which the composite disability is 44%. Posting of the applicant from 13th February, 2016 till date can be seen at internal page -2 which shows the applicant being posted at Arunachal Pradesh and Jaishalmer during this period on being modified areas.

8. As per Rule 11 of Entitlements Rules of 2008, disability shall be considered aggravated by service if on set is hastened or the subsequent course is version by specific condition of military service, such as posted in places of extreme climatic conditions, environment factors related to service conditions e.g. fields, Operations High Altitude etc.

9. The only question to be determined in this case is whether the area of Tenga of Arunachal Pradesh can be considered to be a field area or not. As per respondents, this area is modified field area. Whether, modified field area can be considered to be field area is the moot question. In this regard, Policy letter dated 13.1.1994 of the Ministry of Defence pertaining to "Field service Concessions assessed by Army personnel is relevant. The letter is reproduced below :-

"No. 37269/AG/90PS 3(a)/90/D/Pay Services).

Government of India
Ministry of Defence,
New Delhi-110011,
Dated the 13th January, 1994
To,

The Chief of the Army staff

Sub: Field Service Concessions to Army Personnel Implementation of the recommendation of the 4th Central Pay Commission.

Sir,

I am directed to say that the 4th Central Pay Commission in Para 29.98 of their Report, had recommended that the existing classification of areas for the grant of Field Service Concessions and the concessions admissible in Field Areas to Armed Forces personnel should be reviewed by the Government. The structure of Field Service Concessions has since been reviewed, I am directed to convey the sanction of the President to Implementation of the following decisions taken in this regards in so far as the officers and personnel below officer rank of Army (including Army Postal Service) are concerned.

2.1 Classification of Areas; At present, Field, Areas are classified into three types, namely, Full Field, Field and Improved Modified Field Areas. The areas in which Field Service Concessions are admissible have been re-defined. Hereafter, Field Areas will be classified as Field and Modified Field Areas only.

2.2 Pre-requisites for classifying an area as Field Area and Modified Field Area will be as follows :-

Field Area: Field Area is an area where troops are deployed near the borders for operational requirements and where imminence of hostilities and associated risk to life exists.

Troops in such areas are located for reasons of operational considerations alone and are not living in Cantonments

Modified Field Area :Modified Field Area is an area where troops are deployed in support of Combat echelons/troops in an operational support role. Degree of operational readiness is slightly lower than that in Field Area, though sustained surveillance continues.”.

10. Thus, for the purpose of Entitlement Rules, modified field area shall be considered as field area. It is thus found that applicant's disability was aggravated by posting in field area and he is entitled to disability pension.

11. O.A. stands allowed in the following terms:-

(i) composite disability element of pension on account of 'Hypertension and Type-2 Diabetes Mellitus' as 44%. The applicant is thus entitled to disability pension @ 44% which shall be rounded off to 50%.

(ii) The applicant shall be entitled to arrears of disability pension for a period of 3 years from the date of filing of the present O.A. The present OA was filed on 28.11.2023.

12. This order shall be executed within a period of 4(Four)months from the date of receipt of copy of this order failing which interest @ 8% per annum shall be charged on respondents.

13. No order as to costs.

(Lt.Gen.P.Gopalakrishna Memon), Member(A)

(Justice Sailendra Shukla), Member(J)

M/C/LB