

**ARMED FORCES TRIBUNAL CHANDIGARH REGIONAL BENCH AT  
CHANDIMANDIR**

**O.A. No 03 of 2010**

**Desraj** ... **Applicant**

**Vs**

**Union of India and others** ... **Respondents**

**ORDER**

**29 -07-2010**

**Coram :** **Justice Ghanshyam Prasad, Judicial Member.**

**Lt Gen A.S. Bahia (Retd), Administrative Member.**

For the Applicant (s) : Mr. B.S. Sehgal, Advocate.

For the respondent(s) : Ms. Geeta Singhwal, CGC

**Justice Ghanshyam Prasad**

Learned counsel for the respondents produced the original Release Medical Board proceedings as well as Appellate Resurvey Medical Board proceedings. Copy of the proceedings have also been attached alongwith the reply.

Heard learned counsel for both the parties. The petitioner was enrolled in the Indian Army service in a medically fit conditions on 28.04.1979. He was ultimately invalided out from Army service under Permanent Low Medical Category (P-3) on 30.04.2003 for the three disabilities (i) **Essential Hypertension** (ii) **Coronary Artery Disease** (iii) **Cardio Inhibitory Syncope** and his disability was assessed at 50% for life. However the claim of the petitioner for grant of disability pension was rejected by the PCDA(P) after holding that none of the disabilities is attributable to or aggravated as a result of military service. The applicant filed appeal challenging the decision of the PCDA(P) vide his First Appeal

dated 29.11.2004. However after a gap of 4 years, it was rejected on 27.03.2008. The petitioner preferred Second Appeal to the Defence Minister's Appellate Committee on pension on 30.04.2008 which was also ultimately rejected vide order dated 22.05.2009. Thereafter, this application under Section 14 of the Armed Forces Tribunal has been filed.

The written statement has also been filed. The only ground to oppose the prayer of the petitioner is that the PCDA (P) is the final sanctioning authority who found the disease as not attributable to or aggravated as a result of military service and the other ground is that in accordance to the First Appeal, the petitioner was again brought before the Appeal Medical Board who also found that none of the diseases is attributable to or aggravated as a result of military service. Therefore, the petitioner is not entitled to get the disability pension. A copy of the original Medical Board proceedings as well as Appeal Medical Board proceedings has been annexed.

In course of the submissions, learned counsel for the petitioner submitted that Invalid Medical Board found all the diseases aggravated as a result of stress and strain of the military service with 50% disability but in spite of that the PCDA (P) arbitrarily and beyond its scope rejected the claim of the disability pension of the petitioner. It is further submitted that the Appeal Medical Board arbitrarily and intentionally and beyond its scope gone into the question of attributability or aggravation and held that none of the diseases is attributable to or aggravated as a result of military service. The findings of the Appeal Medical Board on this point are illegal and against the Rule. It has to accept the findings of Invalid Medical Board on

this point. It is further submitted that subsequent Medical board can not go into of attributability or aggravation of the disability.

Learned counsel for the respondents submitted that as the PCDA(P) as well as Appeal Medical Board found none of the diseases as attributable to or aggravated as a result of military service, the petitioner is not entitled to get disability pension.

We considered the submissions of the learned counsel for both the parties as also the opinion of the Invalid Medical Board and First Appeal Medical Board. It is quite apparent from the Invaliding Medical Board opinion that the Board found all the disabilities, aggravated as a result of stress and strain of the military service. In First Appeal Medical Board, contrary to the findings of the Invalid Medical Board went into the question of aggravation or attributability and gave a contrary findings which is not disproportionate under the Rules and Regulations. Even the Appeal Medical Board has no power to go into the question of attributability and aggravation. In the facts and circumstances of the case, the diseases from which the petitioner was found to suffer after more than 20 years in military service is deemed to be attributable to or aggravated as a result of military service in view of Rule 14 of the Entitlement Rules 1982.

Thus having regard to the facts and circumstances of the case as well as the documents annexed as also the relevant Rules and Regulations of the Entitlement Rules, we are of the view that the petitioner is entitled to get the disability pension from the date of his invalidation.

Accordingly, this application is allowed. The respondents are directed to assess and release the disability pension in favour of the petitioner for 50% disability within six months from the date of receipt of

copy of this order. The petitioner is also entitled to get arrears of disability pension which shall be confined to a period of three years prior to filing of the writ petition with interest @ 10% per annum.

Further in the facts and circumstances of the case as well as the harassment meted out to the petitioner, due to wrong decisions of the authorities, we hereby award a cost of Rs. 10000/- to the petitioner. The costs must be paid to the petitioner alongwith arrears.

**(Justice Ghanshyam Prasad)**

**[ Lt Gen A.S. Bahia(Retd)]**

**29-07-2010**

**‘sns’**