

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

TA No 155 of 2010

(Arising out of CS No 117 of 2008)

Ram Chander Plaintiff

Vs

Union of India & Others Respondents

ORDER

09.12.2010

Coram : Justice Ghanshyam Prasad, Judicial Member

: Lt Gen (Retd) NS Brar, Administrative Member

For the Petitioner : Mr Sultan Singh, Advocate

For the Respondent : Mr SK Sharma, Sr Panel Counsel

LT GEN NS BRAR (RETD)

This civil suit filed in the court of Additional Civil Judge (Senior Division) Charkhi Dadri, Distt Bhiwani, on transfer is taken up under Section 14 of the Armed Forces Tribunal Act, 2007.

This suit was filed seeking a decree for declaration to the effect that the plaintiff was entitled to disability pension for 20 % disability, rounded off to 50% as per applicable instructions, from the date it was discontinued ie 25.12.1996 along with arrears and interest. Written statement was filed by the defendants. It was thereafter transferred to this Tribunal.

The case of the plaintiff is that he was enrolled in the Army on 25.09.1981 and was invalided out of service on 05.12.1982 due to Tuberculosis. He was periodically assessed by medical boards and disability pension was granted for the percentage of assessed disability as under

06.12.1982 to 02.11.1983	100%
03.11.1983 to 21.12.1986	30%
22.12.1986 to 23.12.1996	30%

He was again brought before a Re Survey Medical Board (RSMB) on 26.08.1997 and his disability was assessed as 20% for five years ie from 24.12.1996 to 25.12.2002. However, the PCDA(P), Allahabad re- assessed his disability as less than 20% (11 to 14 %) and discontinued his disability pension from 25.12.1996.

The plaintiff filed a Civil Suit No 27/2002 on 08.12.2002 in the Court of Additional Civil Judge (Senior Division), Charkhi Dadri for continuation of disability pension from 24.12.1996 which was decided in favour of the plaintiff. He was accordingly released disability pension for 20 % disability from 24.12.1996 to 30.05.2002 with interest at 12 %. The plaintiff was again brought before a RSMB on 31.05.2002 and his disability was assessed as less than 20% ie 15 – 19 % for life.

The plaintiff claims that the RSMB held on 03.11.1983 had assessed his disability for life. This was converted to three years ie from 03.11.1983 to 21.12.1986 by the PCDA(P) Allahabad which was done arbitrarily and was not justified. Subsequent RSMBs were also not applicable as his disability had been assessed for life. Disability assessed as less than 50% is also to be rounded off to 50% in accordance with Government of India Instructions dated 31.01.2001.

At Para 1 of the written statement filed by the defendants it is admitted that the plaintiff was enrolled on 25.09.1981 and was invalided out of service on 05.12.1982 due to 'Military Tuberculosis 018' assessed as 100 % for one year and attributable to military service. Subsequent assessment upto 23.12.1996, as stated by the plaintiff above, is also not disputed. It is thereafter stated that the plaintiff was brought before a RSMB on 26.08.1997 and his disability was re assessed at 20% for five years.

This was however reduced by the PCDA (P) Allahabad to less than 20% for five years from 24.12.1996 to 25.08.2002 and the disability pension was accordingly discontinued from 24.12.1996. Civil suit in the Court of Additional Civil Judge (Senior Division), Charkhi Dadri having been decided in favour of the plaintiff, he was granted disability pension from 24.12.1996 to 30.05.2002 with interest at 12% pa.

Subsequent claims of the plaintiff are contested by the defendants on the grounds that as per policy circular of Government of India, Ministry of Defence No 16036/DGAFMS/MP(Pen) dated 14.03.2001, the plaintiff being a Pre 1996 pensioner, RSMB was required to be carried out before March 2002 for final assessment of disability for life. Accordingly he was brought before a RSMB on 31.05.2002 which assessed his disability as less than 20% ie 15 – 19% for life. Disability pension claim was accordingly rejected and he was advised to prefer an appeal, if he so desired, within six months. Appeal dated 28.08.2003 was preferred and rejected and he was informed that the disability assessed by the RSMB was final unless the individual requests for a Review Medical Board. The plaintiff requested for the same and which was arranged on 06.10.2004 at Army Hospital (R&R) Delhi Cantt. The Review Medical Board assessed his disability as Nil percentage. There was therefore no residual claim for disability pension.

On the question of rounding off of percentage of disability, it is stated that the provisions of circular dated 31.01.2001 are applicable to those who are invalided out from service on or after 01.01.1996. The plaintiff being a pre 01.01.1996 pensioner, it was not applicable to him.

Heard the learned counsels for the parties.

Assessment of the disability of the plaintiff from 24.12.1996 to 25.12.2002 to less than 20% and discontinuation of disability pension by the PCDA(P) Allahabad was improper and was rightly restored by the Additional Civil Judge (Senior Division), Charkhi Dadri.

From the pleadings of the parties the following chronology and percentage of assessed disability emerges

06.12.1982 to 02.11.1983	100%
03.11.1983 to 21.12.1986	30%
22.12.1986 to 23.12.1996	30%
24.12.1996 to 25.12.2002	20%

The disability of the plaintiff being Tuberculosis, which is curable, he was appropriately brought before RSMBs to re assess his disability in accordance with Regulation 185A of Pension Regulations for the Army 1961. Regulation 185A reads as under

185A. “ Where the disability whether attributable to or aggravated by military service of an individual is considered as capable of change (improve or deteriorate), the period of the first award calculated with reference to the date of the medical board will be in the range of one to five years. The actual period of award in such cases will however be decided by the Medical Board having due regard to the circumstances conditions of each case. The period of the award on resurvey will also be for a period ranging from one to five years and will be decided after taking into account the circumstances of each case.

When the disability is accepted at the same percentage on the basis of three consecutive medical boards including the release/invaliding medical boards the disability will be normally accepted as incapable of improvement and regulated under the provisions of Regulation 143 and the award

of disability pension/disability element shall then be sanctioned for a period of 10 years in the first instance.

Provided that, if in any case where the degree of disablement has been assessed at the same percentage by the three successive boards, but the medical authorities are not in a position to recommend that the disability is of permanent nature the same may be continued to be assessed on temporary basis for such shorter periods as may be considered judicious on the merits of each case.”

From the above it clearly emerges that the plaintiff was meeting the criteria for disability pension under Regulation 173 of Pension Regulations for the Army 1961 upto 30.05.2002 and was accordingly granted the same. Having been invalided out from service for a disease which was attributable to service though less than 20% after 30.05.2002, he would be entitled to service element of disability pension in accordance with Regulation 183 of Pension Regulations for the Army 1961. To that extent the plaint is allowed.

The defendants are directed to assess and release the service element of disability pension to the plaintiff from 31.05.2002. The plaintiff is also entitled to arrears of the same alongwith interest @ 10 percent pa on the arrears which shall however be restricted to three years prior to filing of this suit ie from 18.08.2005. This to be done within six months from the date of receipt of this order failing which it shall carry further interest @ 12 percent pa till the actual date of payment.

There shall be no order as to costs.

[Justice Ghanshyam Prasad]

[Lt Gen NS Brar (Retd)]

December 09, 2010
RS