

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

...

OA No.859 of 2014

...

Diwan Singh

...Petitioner

Versus

Union of India & others

...Respondent(s)

...

For the petitioner : Mr.Surinder Sheoran, Advocate
For the Respondent(s) : Mr, R N Sharma, CGC

...

**CORAM:JUSTICE SURINDER SINGH THAKUR, JUDICIAL MEMBER
LT GEN DS SIDHU (RETD), ADMINISTRATIVE MEMBER**

...

**ORDER
30.06.2015**

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By means of the present petition, the petitioner has prayed for the following reliefs, viz:-

- (i) To quash the impugned letter dated 04.09.2001 (Annexure A-4), vide which the respondents rejected his claim for disability pension w.e.f. 03.05.1995;
- (ii) To direct the respondents to release the disability element of pension to the petitioner @ 20% w.e.f. 02.05.1995 to 31.12.1995 against 20% disability and, thereafter, @ 50%, against 20% disability, with interest; and
- (iii) To issue any other appropriate order or direction which the Tribunal may deem fit and proper in the circumstances of the case.

2. Briefly stated, the fact of the case are that the petitioner joined service in the Indian Army on 08.01.1966 and was invalided out w.e.f. 27.08.1974 with 100% disability due to “**PLUMONARY TUBERCLOSIS**”. The claim of the petitioner for disability pension, consisting of service element and disability

element, against 100% disability was forwarded to PCDA(P) Allahabad and disability pension for one year i.e. from 28.08.1974 to 12.09.1975, was released to him vide PPO No.D/1721/75. The RSMB held on 13.09.1975 re-assessed the disability of the petitioner @ 80% for two years and, accordingly, disability pension for two years i.e. from 13.09.1975 to 12.09.1977 was released to him which was continued upto 10.06.1979 vide PPO No.D/RA/20091/75 and D/RA/16116/77. The next RSMB, held on 19.06.1979, assessed the disability of the petitioner @ 40% for two years and the disability pension at this rate was released to the petitioner from 11.06.1979 to 19.06.1981. RSMB held on 09.03.1981 assessed the disability @ 30% for two years which was also released to the petitioner. Allegedly, the RSMB held on 14.04.1983 recommended the disability of the petitioner for further two years as per Annexure A-1 but the PCDA(P) Allahabad released the disability pension at the reduced rate of 20%, against 30%. Thereafter Re-survey Medical Board was held on 02.05.1985 which recommended the disability of the petitioner as 20% permanent as per Annexure A-2.

3. The grievance of the petitioner is that even though his disability was assessed as 20% (permanent) by the RSMB held on 02.05.1985, Respondent No.3 i.e. PCDA(P) Allahabad, released the disability element of pension to him for 10 years only i.e. from 14.05.1985 to 01.05.1995 and held a Re-survey Medical Board all over again on 29.03.1995 (Annexure A-3) which assessed the disability @ 20% for ten years. Despite this, the PCDA(P), Allahabad rejected the claim of the petitioner for disability pension for five years i.e. from 1995 to 2000. It is further alleged by the petitioner that though he has not been provided

the proceedings of RSMB held in the year 2000, but it is evident from letter dated 04.09.2001(Annexure A-4) of the PCDA(P) Allahabad that his claim for disability pension has been rejected by re-assessing the disability as less than 20% (i.e. 15 to 19 %) for life. Hence the grievance raised in the present petition and the relief(s) prayed for.

4. In the written statement filed, the respondents have raised the preliminary objection of delay and laches. On merits, it is admitted that the RSMB held on 29.03.1995 assessed the disability of the petitioner as 20% for 10 years. However, exercising the powers conferred upon Medical Advisor (Pension) vide Rule 17 and 27(c) of Entitlement Rules for casualty Pensionary Awards the disability of the petitioner was assessed as 15 to 19% for 5 years and, therefore, disability pension was discontinued to the petitioner w.e.f. 02..05.1995 vide PCDA(P) letter dated 08.08.1995 (Annexure R-7). The next RSMB held on 19.04.2001 assessed the disability at 20% for 5 years but again the Medical Advisor(Pensions), PCDA(P), Allahabad, in exercise of powers under the entitlement rules *ibid*, considered the disability as 15-19% for life and discontinued the disability element of pension vide Annexure R-8, dated 04.09.2011. The petitioner was conveyed full facts but he did not file any appeal. In view of this, the O.A. deserves to be dismissed.

5. We have heard learned counsel for the parties and have examined the pleadings as well as the documents on record.

6. From the facts of the case, given above, it is evident that RSMB held on 09.03.1981 assessed the disability of the petitioner @ 30% for two years and disability pension at this rate was released to the petitioner. The next RSMB was held on 14.04.1983 which recommended the disability of the petitioner for further two years as per Annexure A-1, but, the PCDA(P) Allahabad released the disability pension at the reduced rate of 20%, against 30%. Thereafter Re-survey Medical Board was held on 02.05.1985 which recommended the disability of the petitioner as 20% permanent as per Annexure A-2 meaning thereby that no further RSMB was required to be held on the petitioner thereafter and the disability pension @ 20% was required to be released to the petitioner for life. However, the PCDA(P) Allahabad, released the disability element of pension to him for 10 years only i.e. from 14.05.1985 to 01.05.1995 and held a Re-survey Medical Board all over again on 29.03.1995 (Annexure A-3) which assessed the disability @ 20% for ten years. Despite this, the PCDA(P), Allahabad rejected the claim of the petitioner for disability pension for five years i.e. from 1995 to 2000. Ultimately, the claim of the petitioner for disability pension was rejected by re-assessing the disability as less than 20% (i.e. 15 to 19 %) for life. Thus, allegedly and understandably, there has been undue interference by the PCDA(P) Allahabad in the matter of grant of disability pension to the petitioner. It is surprising and beyond our comprehension that under what authority the PCDA(P) Allahabad interpolated its own assessment of disability of the petitioner and restricted the period of his entitlement to disability pension to the disadvantage of the petitioner. Such action on the part of PCDA(P), Allahabad is illegal, arbitrary and without any authority under law. This amounts to arbitrary interference in the findings recorded by a duly constituted RSMB whereby

disability pension stands denied to the petitioner on the plea of less than 20% disability.

7. It is argued by learned counsel for the petitioner that as per instructions dated 25.04.2011, issued by the Addl. Dte. Gen Personnel Services, Adjutant General's Branch, Integrated HQ of MoD (Army), New Delhi, all the Record Offices have been directed to unconditionally withdraw from such cases where there has been alterations in the findings of the IMB/ RMB by MAP in (PCDA(P) without having physically examined the individual. The contents of the said circular are extracted below for ready reference:-

**“REDUCTION OF COURT CASES:
WITHDRAW FROM CONTESTING IN COURT CASES WHERE
FINDING OF IMB/ RMB ALTERED BY MAP IN PCDA(P)**

It may be recalled that the institution of MAP in PCDA(P) has now been abolished, since 2004. Till such time it was in vogue, all med opinions of the IMB/RMB that were recd in PCDA(P) for claims were adjudicated by the MAP (Medical Advisor Pensions) who were considered the final auth to decide on final admissibility of disability pension.

2. These alterations in the findings of IMB/RMB by MAP (PCDA(P) without having physically examined the indl., do not stand to the scrutiny of law and in numerous judgments Hon'ble Supreme Court has ruled that the Medical Bd which has physically examined should be given due weightage, value and credence.

3. It has been noticed that despite a settled legal posn such case are still being contested on behalf of the UOI, which is infructuous and cause undue financial losses to both petitioner as well as the UOI.

4. All Command HQs are requested to instruct all Record Offices under their Comd to withdraw unconditionally from such cases, notwithstanding the stage they may have reached and such files be processed for sanction.

5. Record Offices will ensure that only such cases are withdrawn where:-

(a) Subsequent Appeal Medical Boards have not been held and initial findings of RMB/IMB have assessed disability/ disabilities to be attributable/ or aggravated/ or connected with service.

(b) If subsequently, consequent to a Court Order or otherwise on indl's request any Appeal Medical Board which has physically examined the individual, has been held and they too have confirmed the alteration of MAP (PCDA(P) as NANA or any other assessment which disallows disability pension to an indl. Such cases will NOT be withdrawn.

6. All Record Offices are directed to unconditionally withdraw from all such cases which fulfill the criteria as mentioned in Para 5 above.

7. In case of any clarification, matters may be referred to this office on Tele/ Fax (35048 (ARMY) 23335048 (civil) to prevent any further losses to the petitioners in infructuous litigations.

This has the approval of AG”.

8. The learned counsel also placed reliance on the following decisions of this Tribunal in support of the case of the petitioner:-

- (i) **OA No.3270 of 2012, titled Dalu Ram vs. Union of India & others, decided on 08.05.2014; and**
- (ii) **OA No.562 of 2015, titled Balkar Singh vs. Union of India & others, decided on 29.05.2015.**

8. We may also observe that this Tribunal has in a number of decisions deprecated the tendency of the PCDA(P), Allahabad to tinker with the findings of the duly constituted Medical Boards and thereby rejecting the claims for disability pension. With advantage, we may make mention of few such cases as under:-

- (i) **OA No.926 of 2014, titled Vikramjit Singh vs. Union of India & Ors, decided on 14.01.2015;**
- (ii) **OA No.1243 of 2013, titled Surjan Singh vs. Union of India & Ors., decided on 05.05.2015;**

- (iii) **OA No.2382 of 2012, titled Ram Lok Vs. Union of India, decided on 11.03.2015; and**
- (iv) **OA No.3350 of 2013, titled Jai Singh Dhaka vs. Union of India & Ors, decided on 05.05.2015.**

A reference may also be made to the decision of the Hon'ble Supreme Court in **Civil Appeal No.264 of 1991**, decided on **14.01.1993** in the case titled **Ex Sapper Mohinder Singh vs. Union of India** in which it was held that findings given by the medical authorities regarding a claim of disability pension should be respected by the pension disbursing authorities like the CCDA/PCDA (Pensions), Allahabad. Therefore, the intervention of the said authorities with the findings of duly constituted RSMBs deserves to be quashed and set aside.

The said decision was relied upon by Hon'ble Punjab & Haryana High Court in **Ex.Havildar Babu Singh vs. Union of India and others, CWP No.3296 of 2003**, decided on **26.04.2006** in which it has been held as under:-

“From the above mentioned facts and the stand taken by the parties before us, the controversy that falls for determination by us lie in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension in regard to the percentage of the disability pension or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher Medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to the detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core.”

The above decision was relied upon by a coordinate Bench of this Tribunal while allowing a similar case, titled **Swaran Singh vs. Union of India & others, OA No.1989 of 2013**, decided on **12.08.2014**.

9. In view of the above factual and legal scenario, we hold that action of the respondents to the disadvantage of the petitioner whereby he has been denied disability pension from 02.05.1995 onwards, is illegal and arbitrary and the whole exercise undertaken by the respondents after the Re-survey Medical Board dated 02.05.1985, including issuance of the order impugned, is hereby quashed and set aside.

10. Consequently, the petitioner is held entitled to disability element of pension @ 20% w.e.f. 02.05.1995 to 31.12.1995 against 20% disability and, thereafter, @ 50%, against 20% disability for life by grant of the benefit of rounding-off w.e.f. 01.01.1996 under the policy in vogue with modifications made in the earlier policy vide letter of the Ministry of Defence dated 15th September, 2014 and the latest decision of the Hon'ble Supreme Court in Civil Appeal No.418 of 2012, titled Union of India & others vs. Ram Avtar, decided alongwith other connected appeals on 10.12.2014.

11. In view of the above, the respondents are directed to issue a fresh PPO to the petitioner with admissibility of disability element of pension, as ordered above, and to calculate and disburse the monetary benefits becoming due to him by virtue of the present order by restricting the arrears to three years from the date of filing of the present petition i.e. 19.05.2014, within three months from the

date of receipt of a certified copy of this order by the ld. Counsel for respondents, failing which, the arrear amount shall carry interest @ 8% per annum from the date of this order, till actual payment thereof.

12. The O.A. is partly allowed in the above terms, however, with no order as to costs.

[Justice Surinder Singh Thakur]

[(Lt Gen DS Sidhu (Retd))]

Chandigarh

Dated: 30.06.2015

`bss’

Whether the judgment for reference to be put on internet – Yes/ No