

**ARMED FORCES TRIBUNAL
REGIONAL BENCH
JABALPUR**

CORAM :

**HON'BLE MR JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN GOPAL R, MEMBER (A)**

OA 150/2019

**No. 15378752F, Ex Rect Satish Kumar Joshi
S/o Late Shri Shankar Dayal Joshi,
R/o Shanichari Tori,
Saugor (M.P.).**

.....Applicant

Versus

- 1. Union of India,
Through the Secretary,
MoD, Govt of India, New Delhi.**
- 2. COAS,
IHQ of MoD (Army)
DHQ, PO New Delhi.**
- 3. OIC, Signal Records,
Jabalpur.**
- 4. PCDA (P),
Draupadi Ghat, Allahabad (U.P.).**

.....Respondents

**For Applicant : Mr KC Ghildiyal, Sr. Advocate with
Mr HC Singh and Mr Pradeep Dwivedi, Advocates.**

**For Respondents : Mr Aakash Malpani holding brief of
Mr HS Ruprah, CGSC.**

ORDER

Factual Matrix

1. The applicant was enrolled in the Army on 28.04.1992. During training, while participating in BPET, the applicant had suffered “**FRACTURE SHAFT FEMUR (LEFT)**” on 25.07.1992 which led to his ultimate invalidation on medical grounds on 26.10.1993 after rendering 01 year and 178 days of service. The disability of the applicant was held to be attributable to military service by the Invaliding Medical Board (IMB) and it was assessed at 30% for five years. Disability pension (DP) had been granted w.e.f. 26.10.1993 to 24.09.1998. The Re-Survey Medical Board (RSMB) which was held at Military Hospital (MH), Jabalpur on 13.07.1998 had assessed the disability of the applicant as 11 to 14%. As the disability element of the DP was assessed at less than 20% by the RSMB held on 13.07.1998, the disability element had been stopped and which had been paid till July 2002 was recovered.

Brief Arguments by the Counsel for the Applicant

2. During training in 3 Military Training Regiment, 2 Signal Training Centre, Madgaon, Goa, the applicant had suffered **FRACTURE SHAFT FEMUR (LEFT)** on 25.07.1992. Initially he was admitted in MH, Panaji and later transferred to MH, Kirkee, Pune, where he had been operated upon on 19.08.1992 and a plate had been inserted in his left leg. Subsequently, the applicant had been medically invalided on attributable grounds with 30% disability w.e.f. 26.10.1993. The applicant had been granted DP w.e.f. 26.10.1993 to 24.09.1998. However, the RSMB held at MH, Jabalpur on 13.07.1998 had reduced the disability percentage to 11% to 14% as a result of which the disability element of DP had been stopped. Representations for restoration of disability element had been made by the applicant and these had been rejected on the ground that RSMB had assessed the disability of the applicant at less than 20% and hence not entitled for disability element.

3. Due to this said injury, the applicant is still having problem in walking, kneeling down, in climbing stairs and in sitting cross legged and the disability is much more than 20%. The difficulty being experienced by the applicant has been duly certified by Orthopedic Specialist, District Hospital, Saugor vide certificate dated 17.07.2008 (Annexure A/3). The rejection of restoration of disability element is absolutely contrary to Pension Regulations. The applicant had been invalided in medical category EEE as he was permanently unfit for service. Once, the applicant had been declared permanently unfit for service, the percentage of disability originally assigned cannot be reduced. In these circumstances, the DP could not have been stopped on the ground that disability had been reduced between 11% to 14% and is malafide. Furthermore, as per GoI Circular dated 31.01.2001, a person having disability from 01% to 49% will be entitled to receive the DP @ 50%. In the ibid case as the attributable disability had been assessed at 11 to 14%, in view of the GoI Circular dated 31.01.2001, the applicant is entitled for DP @ 50%.

4. Feeling aggrieved by the non restoration of disability element of DP, the OA has been preferred with the following prayers:-

(a) To quash the DP rejection order by the PCDA (P), Allahabad letter No. G3/RA/3/2003/4426/11 dated 21.07.2003 as well as Signal Records letter No. P/15378752/DP-6/NER dated 05.11.2014.

(b) To direct the respondents to grant disability element w.e.f. 25.09.1998 @ 50% for life along with arrears with interest @ 24% p.a.

(c) Any other appropriate writ, order or direction which the Tribunal may deem just and proper.

Brief Arguments by the Counsel for the Respondents

5. The service details including that of medical treatment and invalidation being matter of record is not gone into. The applicant had been granted DP @ 30% for five years w.e.f. 26.10.1993 to 24.09.1998 vide PPO No. D/001538/94 (Army) dated 20.10.1994 (Annexure R/I). After completion of five years, the RSMB was carried out at MH, Jabalpur on 13.07.1998 wherein he was medically examined and the disability was assessed @ 20% for five years as per AFMSF-17 dated 13.07.1998 (Annexure R/IV). The DP claim had been processed to PCDA (P), Allahabad for sanction where the same was adjudicated in consultation with Medical Advisor (Pension), as a result of which the disability percentage was reduced to 11% to 14% for five years from 25.09.1998 to 12.07.2003. Hence, as per existing Rules in vogue at that point of time the disability element had been stopped.

6. In the next RSMB due in 2003, the applicant was medically examined at MH, Saugor and disability was assessed at 11% to 14% for life long vide AFMSF-17 dated 03.02.2003 (Annexure R/VIII) as a result of which the disability element continued to be not granted to the applicant.

Consideration

7. Heard both the parties and perused the documents placed on record. We observe the following:-

(a) Based on the IMB proceedings dated 25.09.1993, the PCDA (P), Allahabad had accepted and sanctioned DP @ 30% for the period 26.10.1993 to 24.09.1998 vide PPO No. D/001538/94.

(b) Being a Pre 01.01.1996 disability pensioner, we find that the applicant is eligible for rounding off of disability element of DP from 30% to 50% w.e.f. 01.01.1996 to 24.09.1998.

(c) The primacy of medical opinion has been upheld even by the Hon'ble Apex Court in *Secretary, MoD & Ors Vs AV Damodaran (dead) (2009) 9, SCC 140*. The PCDA (P), Allahabad in consultation with the **Medical Advisor (Pension)** had altered the findings of the RSMB dated 13.07.1998 held at MH, Jabalpur, by reducing the disability percentage from 20% to 11-14% and same led to denial of DP to the applicant w.e.f. 25.09.1998 to 12.07.2003. On perusal of the RSMB dated 13.07.1998 Page 4 Para 5, the medical authorities had clearly endorsed that the applicant still continues to be symptomatic. In Page 4 Para 6, with reference to the question "Has the condition of the pensionable disability since last board improved or deteriorated" the medical authorities had clearly endorsed the answer as "**Static**". This is a clear indicator of the status of the applicant. This interference by the PCDA (P), Allahabad/ MA (P) does not stand legal scrutiny and is patently incorrect. Suffice to state that the role of the **Medical Advisor (Pension)** in adjudication of DP is no more res integra and has been dispensed with due to the arbitrary nature. We also do not find that in the documents placed on record, the PCDA (P), Allahabad in support of the rejection of the disability claim giving any cogent reason(s)/evidence to alter the findings of the RSMB.

(d) In view of Para 7 (c) above, we find that the applicant was entitled for disability element of DP @ 20% rounded off to 50% for the period 25.09.1998 to 12.07.2003.

(e) In the last RSMB dated 03.02.2003 held at MH, Saugor, we observe that the disability percentage has been held as 11% to 14% for life. It's a matter of fact and on record that the applicant had been invalidated on attributable medical grounds. The respondents have made a plea that as the disability percentage is less than 20%, the applicant is not entitled for DP. Being a case of invalidation, the issue of stoppage/discontinuation of DP is no more res integra in view of the

catena of judgment including that of Hon'ble Apex Court in ***Sukhvinder Singh Vs UoI, Civil Appeal No 5605 of 2010.***

8. We find that:-

(a) The applicant was entitled for disability element of DP by rounding off disability from 30% to 50% w.e.f. 01.01.1996 to 24.09.1998.

(b) From 25.09.1998 to 12.07.2003, the applicant was entitled for by rounding off disability from 20% to 50%.

(c) From 13.07.2003, is entitled for DP with disability of 11% to 14% being held as 20% and rounded off to 50%, for life.

9. The OA is **allowed**. The arrears to be confined to three years prior date of issue of this order and same to be paid within three months failing which it shall carry interest @ 6% p.a.

10. No order as to costs.

Pronounced in open Court on 25 August 2023.

(LT GEN GOPAL R)
MEMBER (A)

(JUSTICE RAJENDRA MENON)
CHAIRPERSON