

FORM NO.4

(SEE RULE 11 (1))

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA
ORDER SHEET

APPLICATION No. O.A. 89/2014

APPLICANT (S)

Tapas Kumar Mukhopadhyay

RESPONDENT (S)

Union of India and others

Legal Practitioner for Applicant (s)

Legal practitioner for Respondents

Mr. S.K. Choudhury

Mr. Sauvik Nandy

<u>ORDERS OF THE TRIBUNAL</u>	
	<p><u>Order Serial Number:</u> 22</p> <p>Dated :09.12.2016</p>
	<p>Mr. S.K. Choudhury, learned Advocate appears for the applicant. Mr. Sauvik Nandy, learned counsel appears for the respondents. Maj Jitender Singh, OIC, Legal Cell, HQ Bengal Area is also present.</p> <p>The applicant, who has been invalidated out from service on 31.12.1993 after conducting an Invalidating Medical Board, has filed this OA challenging the decision of the respondent authority not to grant disability element of pension and praying for a direction to the respondent authority to grant the said benefit, contending, inter alia, that though the applicant was invalidated out from service based on Medical Board opinion that he has suffered 20% disablement, he has not been granted the disability element of pension on the ground that the higher authority did not accept the opinion of the Invalidating Medical Board relating to the</p>

percentage and such disability was found to be neither attributable to nor aggravated by military service.

Learned counsel appearing for the applicant referring to the averments made in the OA as well as the pleadings filed has submitted that since the Invalidated Medical Board has assessed the percentage of disability of the applicant at 20%, the higher authority without any physical examination could not have reduced the same to 15% - 19%. It has also been submitted that having regard to the fact that the applicant at the time of his recruitment in service was not suffering from disability from which he was found to have suffered while in service, and the Invalidating Medical Board having found that that the disease is idiopathic, there is no reason as to why the respondent authority should deny the claim of the applicant for disability element of pension, as has been done in the instant case. The learned counsel, therefore, prays that the respondent authority may be directed to pay disability element of pension which should be rounded off to 50% with arrears for a period of three years preceding to date of filing of OA and interest thereon.

Learned counsel for the respondents, on the other hand, referring to the averments made in the counter affidavit filed has submitted that the competent authority upon perusal of the relevant records has reduced the percentage of disability of the applicant from 20% to 15% - 19% and hence the applicant has been rightly denied the benefit of the disability element of pension. It has also been submitted that it is evident from the Invalidating Medical Board proceeding that the disability which was found was neither attributable to nor aggravated by military service and hence the applicant in no case is entitled to disability element of pension.

We have considered the submissions advanced by the learned counsel for the parties and also perused the pleadings.

The Invalidating Medical Board in its proceedings dated 07.09.1993 after due examination of the applicant has assessed the percentage of disability at 20% . The said Medical Board however has opined that disability i.e. Bilateral Retinal Perivescitis (Eale's Disease) is neither attributable to nor aggravated by military service. Strangely enough, the authority despite the clear and unambiguous opinion of the Invalidating Medical Board relating to the percentage of disability has reduced the same from 20% to 15% to 19% for five years. No reason, however, could be demonstrated by the respondents for overruling the aforesaid medical opinion of the Invalidating Medical Board which opinion was rendered after physical examination of the applicant by a graded specialist in Ophthalmology. The decision of the respondent authority to reduce the percentage of disability, therefore, cannot be sustained.

This leads to the determination of the question as to whether the authority was right in opining that the disability from which the applicant has suffered is neither attributable to nor aggravated by military service. It is the admitted position of fact that at the time of entry into service on 14.3.1983 the applicant was not suffering from the disability from which he was found to have suffered while he was in service and which was the reason for invalidating the applicant out of service. It also appears from the Medical Board proceedings that the applicant had served in high altitude area in Tangdhar Sector in the State of J&K. It is also ascertained that the disability is idiopathic in nature. The applicant having not found to have suffered from the disability from which he subsequently suffered, the benefit must go to the applicant, as the reason for such disability could not be ascertained. The burden is on the respondents to demonstrate that the applicant was suffering from the said

disability at the time of entry into the service, which could not be detected while examining the applicant at the time of entry into the service. That being the position, the opinion of the respondents that the disability was neither attributable to nor aggravated by military service also cannot be sustained.

In view of above, the applicant is entitled to disability element of pension at the rate of 20%, which is to be rounded off to 50% in view of the judgment of the Hon'ble Supreme Court in the case of Union of India vs. Ram Avtar in Civil Appeal No. 418 of 2012 decided on 10.12.2014 and in terms of Govt. of India decision dated 30.01.2001. The applicant shall also be entitled to arrears for the period of three years preceding to the date of filing of OA and the same will carry interest at the rate of 9% per annum from the said date till the date of payment. The arrears along with interest shall be paid to the applicant within a period of four months from now.

The OA is, accordingly, allowed. No cost.

The learned counsel for the respondents has made an oral prayer under section 31 of the AFT Act, 2007. The said prayer, however, has been rejected as our order does not involve any question of law of general public importance.

Let the original records be returned to the respondents after observing due formalities.

Let a plain copy of this order, duly counter signed by the Tribunal Officer, be supplied to the parties after observance of requisite formalities.

(Lt Gen Gautam Moorthy)
Member (Administrative)

(Justice B P Katakey)
Officiating Chairperson