

Form No.4
[(SEE RULE 11(1))]
IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET

O.A. No. 82 of 2015

APPLICANT (S)	:	Ex-SEP Kinkar Pramanik
RESPONDENT (S)	:	Union of India and Others
Legal Practitioner of applicant	:	Legal Practitioner for Respondent (s)
Mr. Subhash Chandra Basu	:	Mr. B.K. Das

ORDERS OF THE TRIBUNAL

Order Serial Number : 19 Dated : 23-03-2017

Heard Mr. Subhash Chandra Basu, Ld. Counsel for the applicant and Mr. B.K. Das, Ld. counsel for the respondents.

2. It is a very unfortunate case where the applicant was initially granted Constant Attendance Allowance (CAA) with effect from the date of invalidating him from service i.e. 11.12.1981, which has been stopped by the respondents with effect from 24.4.2006, despite the fact that his percentage of disablement continues to be 100%.

3. Referring to the Medical Board proceedings dated 4.5.2002 it has been submitted by the learned counsel for the applicant that since the Re-survey Medical Board (RSMB) has opined that the percentage of disablement of the applicant, which was 100%, remains unchanged, there was no occasion for discontinuance of the CAA with effect from 24.4.2006, which was earlier granted with effect from 11.12.1981, the date when the applicant was invalidated out from service because of his 100% disablement. Learned counsel, therefore, submits that the respondents may be directed to pay the CAA with arrear from 24.4.2006 and continue to pay the same for life. It has also been submitted that the respondents may also be directed to pay interest on the arrear CAA and cost.

4. The learned counsel appearing for the respondents, on the other hand, has submitted that the CAA was not paid to the applicant with effect from 24.4.2006 as the Medical Authority has certified that such allowance is not payable to the applicant.

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

6. The applicant was invalidated out from service on 11.12.81 as he suffered from 100% disablement. Having regard to the nature of disablement and the percentage thereof, the respondent authority

decided to pay CAA to the applicant with effect from the date of discharge i.e. 11.12.1981. The CAA accordingly was paid to the applicant, which however has suddenly been stopped by the respondents with effect from 24.4.2006, purportedly based on the opinion of the Medical Authority.

7 It appears from the Medical Board proceedings dated 4.5.2002, based on which payment of CAA to the applicant has been discontinued, that the Medical Board found that there was no change on the disability condition of the applicant, which was found to be 100%. The Chairman of the Medical Board however has, despite that, commented that the applicant was not entitled to the CAA, without any basis therefor.

8. Having regard to the aforesaid position, this Tribunal vide order dated 26.9.2016 directed the respondent authorities to file an affidavit stating the reasons for stoppage of the CAA to the applicant with effect from 24.4.2006, pursuant to which Lt Col A. Saha, the Chairman of the RSMB filed an affidavit to the effect that though the applicant was found to be 100% disabled and entitled to CAA by the RSMB, he however through oversight has put a remark that the applicant is not entitled to CAA, based on which the payment of CAA has been discontinued. Lt Col Saha has also prayed for acceptance of his unconditional apology for such serious mistake committed by him.

9. It is an admitted position of fact that the applicant having found to be entitled to CAA he was paid the same with effect from his date of discharge i.e. 11.12.1981. The payment of CAA to the applicant was discontinued with effect from 24.4.2006 based on the mistake committed by the Chairman of the Medical Board, who has accepted his mistake in the affidavit filed, despite the fact that the percentage of disablement of the applicant continued to be 100% and he was found to be entitled to CAA.

10. In view of above, we are of the considered opinion that the applicant is entitled to CAA which has been wrongly withheld by the respondents with effect from 24.4.2006. The respondents are, therefore, directed to release the CAA payable to the applicant with effect from 24.4.2006 and continue to pay the same for life. The applicant shall also be entitled to interest on the arrear at the rate of 9% per annum with effect from 24.4.2006 till the date of payment of the arrear. The arrear along with interest shall be paid to the applicant within a period of three months from the date of receipt of a copy of this order.

11. Having regard to the aforesaid position, we also impose costs of Rs. 50,000/- (Rupees Fifty thousand) only to be paid by the respondents to the applicant within a period of three months from today.

12. The OA is, accordingly, allowed with costs as aforesaid.

13. Learned counsel for the respondents, at this stage, has made an oral prayer to grant leave to appeal to the Hon'ble Supreme Court under section 31 of the AFT Act, 2007, which prayer however, has been rejected as our order does not involve any question of law having general public importance.

14. Let a plain copy of this order, duly countersigned by the Tribunal Officer, be supplied to the parties upon observing requisite formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER(ADMINISTRATIVE)

(JUSTICE B.P. KATAKEY)
MEMBER (JUDICIAL)