

(SEE RULE 102 (1))
ARMED FORCES TRIBUNAL, KOLKATA BENCH
OA NO. 36/2015

THIS 18TH DAY OF MARCH, 2016

CORUM

HON'BLE JUSTICE N.K. AGARWAL, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT(S)

Ex-No. 14514902Y CFN Prodyot Kumar Maity
S/o Late Jatindra Nath Maity
R/o 15A, Bose Para Road
P.O. – Barisha
P.S. - Thakurpukur
Dist. – South 24 Parganas
West Bengal – 700 008

-versus-

RESPONDENT(S)

1. The Union of India through the Secretary
Min of Defence, Government of India,
Ministry of Defence, South Block,
New Delhi - 110011
2. The Chief of Army Staff
Through Adjutant General
Integrated HQ of MoD (Army)
South Block, DHQ P.O.
New Delhi - 110011.
3. The Secretary
Department of Ex-Servicemen Welfare & Pension
Ministry of Defence, South Block
New Delhi – 110 011.
4. The Officer-in-Charge
EME Records
P.O. – Trimulgheery
Secunderabad – 500021
Andhra Pradesh
5. Principal Controller of Defence Accounts (Pension)
Draupadi Ghat
Allahabad – 211014
(U.P.)

For the petitioner (s)

Mr. S.K. Choudhury, Advocate

For the respondents

Mr. S.K. Bhattacharyya, Advocate

ORDER

PER HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

1. This is an application filed under Section 14 of AFT Act 2007 against denial of disability pension. The facts are as under :-

(a) The applicant was enrolled in the Corps of EME on 02.11.1973. While the applicant was serving in Ranchi between 21.10.76 and 24.12.79 he was treated at Military Hospital, Namkum for low backache. From the medical records it is seen that the backache occurred following fall and he was brought before the Release Medical Board which opined that disability was aggravated by military service and assessed him at 20% for a period of 2 years. He was subsequently released on 24.12.79. His claim for disability pension was rejected by the Office of PCDA (Pension) on 06.06.1980 stating that it was neither attributable to nor aggravated by military service and accordingly he was granted a sum of Rs. 1621.10 on account of invalid gratuity. The fact of rejection was communicated to him vide EME Records letter with an advise to prefer an appeal against the rejection of disability within 6 months from 06.06.1980 if deemed fit. No such application was preferred by the applicant.

2. In the affidavit in opposition filed on 23.09.2015, the Respondents have quoted MoD (Army) letter No. B/39022/Misc/AG/PS-4(L)/BC dated 25.04.2011, copy reproduced as under :-

Tele – 23335048
23013500

Addl Dte Gen Personnel Services
Adjutant General's Branch
Room No. 438, B Wing, 4th Floor
Integrated HQ of MoD (Army)
DHQ PO New Delhi – 110011

B/39022/Misc /AG/PS-4(L)/BC

25 Apr 2011

HQ NORTHERN COMMAND(A)
HQ SOUTHERN COMMAND(A)
HQ EASTERN COMMAND (A)
HQ WESTERN COMMAND (A)
HQ CENTRAL COMMAND (A)
HQ SOUTH WEST COMMAND (A)
HQ ARMY TRAINING COMMAND(A)
HQ A & N,COMMAND (A)
HQ STRATEGIC FORCES COMMAND(A)

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

1. It may be recalled that the Institution of MAP i.e. 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 or IMB/RMB by MAP (PCDA (P)) without having Physically examined the indl, do not stand to the scrutiny of law and in numerous judgements Hon'ble Supreme Court has ruled that the Medical Bd which has physically examined should be given due weightage, value and credence.
3. It is been noticed that despite a settled legal posn such cases are still been contested on behalf of the UOI, which is infructuous and causes 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 by MAP PCDA(P) is Nana or any other assessment which disallows disability pension indl, such cases are NOT withdrawn.
6. All Record Offices are directed unconditionally withdraw from all such case 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) 23335040 (CIVIL) to prevent any further losses to Uol/petitioners in infructuous litigations.

8. This has the approval of AG.

Sd/-
(Ajai Sharma)
Col
Dir, AG/PS 4(Legal)
For Adjutant General

Copy to :

DDG (Pers)
JAG Deptt
AG/PS-5
AG/PS-4(Imp)
All Line Dtes
All Record Offices
All Legal Cells.

3. The Respondents have also stated that they have been instructed to withdraw from such case unconditionally notwithstanding the stage they may have reached and such files be processed for sanction.

4. The Respondents in this case admit that the applicant's case clearly comes under the purview of the above mentioned case (supra) and the case has already been processed on 30.06.15 to accord disability pension for 2 years and thereafter for holding his Re-Survey Medical Board for the reasons mentioned above.

5. The application is therefore allowed and the applicant is entitled for grant of disability pension taking the disability at 20% which is to be rounded of upto 50% as per Govt. of India letter with arrears for 3 years with 12% interest prior to filing application. The payment shall be made within 3 months of receipt of this order. The applicant will be brought before a RSMB for further assessment of disability and medical condition.

6. The application thus stands allowed without any order as to cost. Accordingly, the application is disposed of.

7. A plain copy of the order, duly countersigned by the Tribunal Officer, be furnished to both sides after observation of usual formalities.

(Lt Gen Gautam Moorthy)
Member (Administrative)

(Justice N.K. Agarwal)
Member (Judicial)