

A F R

(SEE RULE 102 (1))
ARMED FORCES TRIBUNAL, KOLKATA BENCH
T.A NO. 10/2014

(Arising out of O.A. No. 838/2014, Lucknow Bench

With M.A. No. 596/2014

THIS 16TH DAY OF MARCH, 2016

CORAM

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

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

APPLICANT(S)

No. 13863006 Ex-Sepoy Dinesh Kumar
S/o Late Sri Ram Singh
Village - Sonchari
P.S. – Parwalpur
Distt. - Nalanda
State - Bihar

-versus-

RESPONDENT(S)

1. The Union of India through Army Chief
Ministry of Defence, Government of India,
R.K. Puram
New Delhi
2. Office of the Adjutant General's Branch,
Integrated HQ of MoD (Army)
DHQ PO New Delhi - 110011.
3. Senior Record Officer
Sena Seva Corps Abhilekh (Yantric Bhawan)
ASC Records South (MT)
Bangalore – 560 007
4. Office of the Chief CDA Pension PCDA (P)
Draupadi Ghat
Allahabad (U.P.)

For the petitioner (s)

Mr. Satyendra Kumar Singh, Advocate

For the respondents

Mr. Anup Kumar Biswas, 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 joined Indian Army on 05.12.1977 being enrolled as Sepoy. During his posting at Jammu in 1988 he was admitted in Hospital for back problem and was operated for Lumbar Canal Stenosis in 1988 and his disability was assessed at 20% by the Neurology Centre of Base Hospital between 17.05.88 to 30.06.88. After the operation he continued to serve and was discharged on 30.09.1993 after 15 years 9 months and 25 days service in the Army. The Release Medical Board opined that the disability was permanent at 20% and the cause was stress and strain due to military service in peace. It was signed on 17.08.93 and approved on 14.09.93. However, the PCDA (Pension), Allahabad reduced the same to Nil vide Order of PCDA (P) dated 30.08.1994.

(b) The applicant made representations on 01.07.2013 and 15.01.2014 to the Adjutant General of the Indian Army and this was forwarded to OIC Records, ASC (MT), Bangalore on 26.08.13 .

2. The respondents on the other hand have not only not contested the case but instead have also filed a letter from ASC Records (South), Bangalore to HQ Bengal Area Legal Cell which is reproduced as under :-

"Tele Mil : 6359

REGISTERED BY SDS
*Sena Seva Corps Abhilekh
(Dakshin)
ASC Records (South)
Bangalore – 560 007*

1386006/CC-2/Legal Cell

16 Feb 2016

*HQ Bengal Area Legal Cell
PIN – 908751
c/o 99 APO*

TA NO. 10/2014 WITH MA NO 596/2014 FILED BY NO 13863006 EX SEP
DINESH KUMAR VS UOI & OTHERS BEFORE THE AFT, KOLKATA BENCH

1. Ref to your letter No. 901488/DK/AFT/Cal dated 27 Jan 2016.
2. Brief of the case is enclosed herewith in duplicate.
3. On perusal of the service dossier, it reveals that the RSMB had held his invaliding Disability as Aggravated by Military Service and assessed at 20% for life (permanent). However, during adjudication, the Military Advisor (Pension) att to CDA (Pension) Allahabad had altered the opinion of the RMB and assessed his disability as NANA and rejected the disability pension claim of the Applicant. In the instant case, no Appeal Medical Board was also held. Therefore, as per Addl Dte Gen Personnel Service, AG's Branch, IHQ of MoD (Army) letter No. B/39022/Misc/AG/PS-4 (L)/BC dated 25 Apr 2011 (copy attached), this case need not to be contested being infructuous and causing undue financial losses to both the parties and needs to be disposed with an appropriate order of the Hon'ble Tribunal to process the case for Government sanction.
4. It is, therefore, requested to get the OA disposed of with an appropriate order to enable this Office to process the case for obtaining Govt sanction for granting Disability Element as per opinion of the RMB held at MH Nasirabad on 24 Aug 1993.

Sd/-
 (K Unnikrishnan)
 Maj
 Senior Record Officer
 For OIC Records

Encls : 10 Sheers only

Cop[y to :-

Dte Gen of Sup & Tpt (ST-12) -
 QMG's Branch
 IHQ MoD (Army)
 PIN – 900256
 c/o 56 APO

1. Ref JAG Branch, HQ Eastern Comd Sig No. 240259/OTHERS/JAG (LIT) dated 01 Feb 2016 and our Sig No. Q-5577 dt 04 Feb 2016.
2. Copy of Brief of the case as mentioned at Para 2 above is fwd herewith alongwith TA for info Of IHQ of MoD (Army).

HQ Bengal Area (DV) -
 Pin – 908751
 C/O 99 APO

1. Ref our Sig No. Q-5533 dt 21 Jan 2016.
2. You are requested to detail a local Defending unit to deal with the case on behalf of Union of India and others and to meet the legal Expenses arising out of it in accordance with SAO 5/S/2001 (JAG).

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 Uoi/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 aforesaid letter speaks in volume. Percentage of disability assessed by the Release Medical Board has been reduced as 'nil' by the PCDA(P) without having any jurisdiction and competence in this regard and, therefore, the applicant was certainly entitled for grant of disability in the light of opinion of Release Medical Board. Though belatedly the respondents have realized their mistake and are now ready to consider the applicant's claim, it appears that their good sense prevailed. However, looking to the pendency of the matter we deem it proper to grant relief to the applicant instead of remitting the matter for decision of the respondents.

4. For the reasons mentioned above, the application is allowed. The applicant is entitled for grant of disability pension taking his disability as 20% which has to be rounded upto 50% as per Government's circular issued in the year 2001 for life. Arrears, however, will be restricted to 3 years prior to filing the petition i.e. 3 yrs prior to 28.04.2014 with 6% interest on arrears. The payment shall commence within 3 months of receipt of this order.

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

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

(Lt Gen Gautam Moorthy)
Member (Administrative)

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

ss/ad