

(SEE RULE 102 (1))
ARMED FORCES TRIBUNAL, KOLKATA BENCH
T.A. No. 11/2015
(Arising out of W.P.(C) No. 7334/2015)

THIS 27th DAY OF APRIL, 2016

CORAM

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

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

APPLICANT(S)

Keshab Kumar Nayak
S/O Santi Santosha Nayak of

Village : Erada,

P.O- Erada, P.S. Bhadrak,
Dist. Bhadrak.

Versus

RESPONDENT(S)

1. The Union of Government through the
Principal CDA (Pension) Draupadighat,
Allahabad.

Danapur- Pin- 181503.

2. Senior Record Officer, Bihar Regiment Centre,

Bihar Regiment, Pin - 908765

3. The Officer-In-Charge,

B.H Lucknow.

4. President Medical Board,

For the petitioner (s)

Mr. G. C. Nayak, Advocate

For the respondents

Mr. B. K. Das, Advocate

O R D E R

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

1. The instant TA has been filed by the applicant claiming disability pension. Earlier, W.P. (C) 7334 of 2015 was filed by the applicant before the Hon'ble High Court of Orissa and after constitution of the Armed Forces Tribunal under the Armed Forces Tribunal Act, 2007, the same was transmitted to this Tribunal and renumbered as TA 11/2015.

2. The facts necessary to resolve the controversy in the matter are in narrow compass.
3. The applicant was enrolled in the Bihar Regiment on 27.12.1987. After completion of basic military training, he was posted to various units. After completion of his terms of engagement he was discharged from service with effect from 01.01.2005 on medical grounds and as per assessment of the Medical Board his disability was 60% for life which was attributable to and aggravated by military service. Consequently, the applicant's claim for grant of disability element of pension was processed by the competent authority and was sent to PCDA(P), Allahabad for issuance of PPO. However, the PCDA(P), Allahabad, issued the PPO considering the applicant's disability as 20% which, according to PCDA(P) has been assessed by the competent Medical authority associated with the Pension Office, i.e. Medical Advisory (P).
4. The learned counsel for the appellant would submit that the act of the respondents in non-granting disability element of pension taking into consideration his disability as 60% is per se illegal. The applicant was never called for Review Medical Board. The opinion of Medical Board cannot be reviewed unilaterally by a Medical Officer, that too, without assessing the applicant afresh and, therefore, the applicant be allowed disability element of pension taking into consideration his disability as 60% which is to be rounded off as 75% in view of the Government's circular dated 31.1.2001.
5. On the other hand, the respondents have supported the order of PCDA(P), Allahabad, granting disability element of pension to the applicant taking his disability as 20%. According to the respondents' counsel, the same is based on the opinion of competent medical authority, i.e. Medical Advisory (Pension). Mr. Das would submit that though the Records Office has recommended the matter for grant of pension with 60% disability in accordance with the assessment of Medical Board but it has been reduced by the PCDA(P).
6. We have heard the learned counsel for the parties and perused the records. Indisputably the cause of action for grant of disability element of family pension was arose on 01.01.2005. The letter dated 25.4.2011 issued by ADG Personnel Services, Adjutant General's Branch, Integrated HQ of MoD (Army) being No. B/39022/Misc/AG/PS-4(L)/BC has specifically ordered all Commands of the Army to withdraw from contesting in Court cases where finding of IMB/RMB has been altered by MAP in PCDA(P). Extracts of the letter are reproduced below :

“1. It may be recalled that the institution of MAP in PCDA(P) has now been abolished since 2004. Till such time it was invoked, 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 authority to decide on final admissibility of disability pension.

2. These alterations in the findings of 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 being noticed that despite a settled legal posn such cases are still being 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)) as NANA or any other assessment which disallows disability pension to an indl, such cases will not be withdrawn.

6. All Record Offices are directed to unconditionally withdraw from all such cases which fulfill the criteria as mentioned in para 5 above.”

7. As per the above circular MAP in PCDA (P) has been abolished since 2004. Therefore, it is difficult to understand how the disability has been reduced in the case of the applicant in whose case the cause of action arose on 01.01.2005. The respondents have also failed to produce any medical report given by MAP. The aforesaid issue was further considered by this Bench while delivering judgment on 14.03.2016 in OA 52/2015 in the case of **Debasish Ghosh vs. Union of India** and others. For the sake of convenience, paragraph 19 of the above judgment is reproduced below :

“ We find no reason for PCDA (P) to reverse the opinion of the COI and the Release (Invalidating) Medical Board for the reasons mentioned in paragraph 10(supra). In this connection, the following decisions highlighting the over-reach of the PCDA(P) Allahabad are appended below :

“Ram Kumar Singh vs. Union of India, Rajasthan High Court Jaipur, SB Civil WP No. 4904 of 1997 Role of CCDA(P)

The petitioner was enrolled in Army in Regt of Artillery on 19 Jan 1960 and actually fought INDO PAK wars in 1965 and 1971 and was awarded 8 medals including Samar Seva Star and Paschim Star. On 30 Sep 1965 he sustained injury to his right eye due to splinter by air attack from enemy shelling. He was placed in medical category ‘CEE’ permanent for ‘Medical degeneration right eye’. He was discharged from service on 1 Jun 1978 on his own request on compassionate grounds after completion of 18 years 4 months and 130 days service. The medical board recorded his disability as attributable

to service in war zone and assessed as 30% for two years but the recommendations of the medical board were not accepted by Chief Controller of Defence Accounts (Pension) and disability pension claim rejected on the ground that his disability was not attributable to military service. On appeal the President of India decided the disability to be attributable to military service in war zone but the CCDA(P) arbitrarily reduced the disability from 30% recommended by the medical board to 15-19% and rejected his disability pension claim. Disability was once again assessed as 30% by the Medical Board but the CCDA(P) again reduced it to 15-19% in view of Regulation 173 of Pension Regulations for the Army, Part I. The Re-survey Medical Board confirmed permanent disability status with 90% disability but the CCDA(P) reduced the disability from 90% to 50% and granted disability pension @ Rs.225 per month from 19 Dec 1994. In the writ petition he prayed that the disability pension should be recomputed.

Held, there was no basis or reason or rationality with the CCDA(P) to disagree with the Reports of the Medical Board and Re-survey Medical Board. There was no justification for the CCDA(P) to reduce the petitioner's disability from 30% to 15-19% from 90% to 50%. The Medical Board consists of specialists in the subject in the field of medical science and their opinion could not have over-ruled by those who had no occasion to make real assessment of the disability of the pensioner.

It is not in dispute that in calculating the length of qualifying service, fraction of a year equal to three months and above but less than six months shall be treated as a completed one half year and reckoned as qualifying service. The petitioner who got retired after rendering 18 years 4 months and 13 days service has actually rendered 18 years and 6 months and his disability pension should be reassessed treating his qualifying service as 18 years and 6 months.

Writ petition allowed and respondents directed inter alia to pay disability pension @ 30% from 1 Jun 1978 to 22 Mar 1987, 90% w.e.f 23 Mar 1987 and 100% w.e.f 12 Dec 1987, to recompute his service element of pension for 18 years and 6 months of service w.e.f 26 Jun 1983 onwards and pay the arrears with 18% interest within four months. Also entitled to cost as Rs. 3000. (Order dated 23 Mar 1999)."

“Surmukh Singh, Ex Hav v. Union of India, 1999(4) SLR 511(P&H).

Authority of CCDA(P)

Having suffered some eye disease, the petitioner, a Havildar, was down graded to medical category CEE for six months. Later, the Invaliding Medical Board boarded him out of military service with disability assessed at 40%. His claim was forwarded to CCDA(P) Allahabad for the sanction of disability pension who rejected it on the ground that the authority had found that the disability was less than 20%, which disentitled him to the award of disability pension.

Held, it was not open to the CCDA(P) Allahabad to review the findings of the Invaliding Medical Board as the opinion of the Board, which had been recorded on a physical examination of the patient, must be accepted. Moreover, it will be seen that the order gives no reason whatsoever as to why the CCDA(P) Allahabad had differed with the opinion of the Board with regard to the extent of the petitioner's disability."

“Mukhtiar Singh, Ex Hav v. Union of India, Delhi CWP No. 2811 of 1993.

Re-assessment

1. *Twenty per cent, temporary disability pension was being given to the petitioner after he was assessed having 20% disability during Re-survey Medical Board held on AFMSF-17. Thereafter the proceedings of disability pension claim were sent to CDA(Pension) Allahabad. The latter ignored the opinion of the Re-survey Medical Board and once*

again assessed the petitioner's disability at eleven to fourteen % and disallowed the pension. The petitioner moved to the High Court.

2. *Held, it was not open to the CDA(P) Allahabad to ignore the Re-Survey Medical Board opinion without any further reassessment by the Re-Survey Medical Board. The CDA(P) Allahabad was directed to pass appropriate orders for payment of disability pension at 20%. (Petition allowed, order dated 6 Feb 1995)*

*In another case this Bench in OA No. 105 of 2013 in the case of **Ex-RectKhageswarNayak vs. Union of India and 5 others** on 23.7.2014 has ruled as under :*

"From the above facts it appears that that PCD(P) or CDA has acted as a superior authority to the Medical Board and overruled the Medical Board's opinion at its sweet will without even bothering to disclose any reason for such decision. This is absolutely illegal and unjustified."

Further, in the same case on 21.8.2015 the Sr. Accounts Officer from PCDA (P), Allahabad ShriKamalesh Kumar Shukla appeared and stated that the order of 12.7.1951 under which the finding of Medical Board and question of entitlement to disability pension and/or percentage of disability were not considered final and were subject to alteration by CDA(P) Allahabad acting on the advice of his Medical Advisor (Pension), has been withdrawn from 2005. The extracts of the order dated 21.8.2015 are quoted as under :

"It appears that the disability element of pension sanctioned to the applicant by the Medical Board has been stopped by CCDA in terms of an order dated 12.7.1951. We have been confirmed by ShriKamalesh Kumar Shukla, Sr. Accounts Officer from PCDA(P), Allahabad who appears today that the order of 1951 has now been withdrawn from 2005. From the affidavit filed today, it appears that the opinion of Medical Board has been reviewed by the Medical Advisor, pension to the Record Office. We fail to understand as to how the opinion of Medical Board consisting of 3 to 5 Medical Officers can be reviewed by one Medical Advisor. The decision taken by the Medical Board seems to be final and CCDA has no right to stop the pension. Accordingly as an interim measure, we direct the respondent authorities including the PCDA(P), Allahabad to restart the disability element of pension with effect from August, 2015 and the entire arrear of such pension will be deposited with this Tribunal within one month."

8. Considering the above aspect of the matter, on the face it is clear as crystal that reduction of applicant's disability from 60% to 20% is illegal. **If this is the manner in which the Army Personnel are treated, it can be said that it is extremely unfortunate. The Army personnel are bravely defending the country even at the cost of their lives and we feel that they should be treated in a better and more humane manner by the governmental authorities, particularly in respect of their emoluments, pension and other benefits. (As observed by the Hon'ble Supreme Court in the case of NandLal Vs. state of Uttarkahand and anr reported in (2010) 4 SCC 562)**

9. For the reasons mentioned hereinabove, in our considered opinion the application deserves to be and is hereby allowed.

The respondents are directed to pay the applicant disability element of pension considering his disability as 60% which is to be rounded off as 75% in view of Government's circular dated 31.01.2001. The applicant is also entitled for arrears of such pension with effect from 01.01.2005

with 6% interest per annum. The entire exercise has to be completed including issuance of fresh PPO by the respondents within a period of three months from the date of receipt of a copy of this order.

10. The application thus stands disposed of.

11. No order as to costs.

12. Let a plain copy of this order, duly countersigned by the Tribunal Officer, be furnished to the parties after observing requisite formalities.

(LT GEN GAUTAM MOORTHY)
Member (Administrative)

(JUSTICE N.K. AGARWAL)
Member (Judicial)

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