

FROM NO. 21

(SEE RULE 102(1))

ARMED FORCES TRIBUNAL , KOLKATA BENCH

APPLICATION NO :OA NO. 65 OF 2012

ON THIS 25th DAY OF FEBRUARY, 2013

CORAM

HON'BLE JUSTICE RAGHUNATH RAY , MEMBER (JUDICIAL)

HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

Ex Sub Basanta Kumar Dash ,
Permanent resident of House No. MA-09, GGP Colony, Bhubaneswar,
P.S. – Mancheswar, Dist. Khurda, Orissa.

.....Appellant

-VS-

1. Union of India through
The Secretary , Ministry of Defence,
New Delhi.
2. The Chief of Army Staff,
Sena Bhawan,
New Delhi .
3. The PCDA(P),
Allahabad – 14 (U.P).
4. DGAFMS,
Ministry of Defence,
New Delhi.
5. OIC Records,
Sena Seva Corps Abhilekh (Dakshin),
ASC Records (South),
Bangalore – 560 007.
6. OC Troops,
HQ 4 Corps, C/O 99 APO.

**7. The Secretary,
Army Group Insurance Fund,
AGI Bhawan, Rao Tula Marg,
R K Puram,
New Delhi – 66.**

..... Respondents

For the petitioner : Mr. Bisikesan Pradhan , Advocate

For the respondents : (i) Mr. Dipak Kumar Mukherjee , Advocate (Respondent Nos. 1 to 6)

(ii) Mr. Mintu Kumar Goswami (Respondent No. 7)

JUDGEMENT AND ORDER

Per HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

The Original Application (OA) No. 65 of 2012 was take up this day for hearing. The applicant in this OA is an ex-Subedar of the Indian Army who consequent to his retirement was aggrieved for not receiving any disability pension although, as submitted by him, he was entitled to such pension. Consequential benefits from the Army Group Insurance Fund (AGIF) was also denied to him that would have otherwise been granted to him had he received such disability pension. Being aggrieved on such account, the applicant had filed a writ petition before the Hon'ble Orissa High Court {WP(C) No. 2499/2004} (Annex. A-11 series). This writ petition was disposed of vide an order dated 12.09.2008 with liberty to the petitioner to prefer an appeal before the competent authorities. The said order was later modified by another order dated 15.02.2011 of the Hon'ble Orissa High Court to the extent that the competent authorities were provided a time frame to dispose of such appeal. The applicant's appeals before the authorities were rejected. Therefore, the grievance persisted. Having got no relief despite his appeals before the appropriate authorities, the applicant preferred this OA seeking relief from this Tribunal.

2. Briefly the matter is that the applicant was enrolled in the Army on 05.11.1975 and was discharged in the rank of a Subedar in PA (Personal Assistant) trade on 28.02.2003 on completion of the stipulated age of retirement. During the course of his service in the rank of Havildar, while serving in 54 Infantry Brigade as Part of 4 Corps, he had moved to Amritsar on Operation Trident in 1987, where he was deployed along with his unit which was HQ 54 Infantry Brigade. While serving there he met with an accident on 15.05.1987 and suffered 'crush injury Rt. Lower limb for which he was operated. The applicant was treated in Military Hospital in Amritsar and was placed in low medical category.

3. Being a case of injury, a proper court of inquiry was held on 25.05.1987 convened by HQ 54 Infantry Brigade to investigate into the circumstances of the accident and injury. As per the opinion of the said Court of Inquiry that was submitted in original before this Tribunal by the respondents, when called for to submit all original documents, the opinion of the Court of Inquiry is as under:-

"OPINION OF THE COURT

1. *The court is of the opinion that the civ driver of mini truck PUQ 5226 Shri Sarwan Singh, S/O Shri Jaswant Singh of village Monak Kalan, near Tenda Urmur (Hoshiarpur) is to be blamed for the accident.*
2. *The court also opines that the injury of Hav/PA BK Dash be attributable to Military Service in field area.*
3. *The court also recommends that a civil suit should be filed against the dvr Shri Sarwan Singh and Shri Banarsi Dass, the owner of the truck so that compensation claim for disability can be made."*

4. Mr. Bisikesan Pradhan, learned counsel appearing on behalf of the applicant, highlights this point that Court of Inquiry had clearly opined the injury to be attributable to the military service in field area. The ibid opinion was agreed by the Commander of the 54 Infantry Brigade who also has recorded that the injury of the applicant was sustained in field and such injury was

attributable to military service. The opinion of the Brigade Commander in this respects is quoted below:-

“OPINION OF OFFG GDR 54 INF BDG ON THE C OF I PROCEEDINGS INVESTING THE CIRCUMSTANCES UNDER WHICH NO. 6648618Y HAV/PA BK DASH OF HQ 15INF DIV MET WITH AN ACCIDENT WITH CIVIL MINI TRUCK REGD NO. PUQ 5226 DRIVEN BY SHRI SWARN SINGH ON 15 MAY 87

- 1. I agree with the opinion of the Court.*
- 2. The accident occurred due to rush and negligent driving of Mini Truck No. PUQ5226 by Shri Swarn Singh on 15 May 87. I direct that civil proceedings be initiated against the dvr of Mini Truck sShri Swarn Singh.*
- 3. The injuries sustained by No. 6648618Y Hav/PA BK Dash of HQ 15 Inf Div are attributable to mil service in field.”*

5. Subsequent to the court of inquiry, an injury report was also initiated for the applicant in terms of Regulation 520 of Regulations for Army, 1987 (Revised). The injury report is at annexure A-1 to the OA. The Brigade Commander has very clearly endorsed in para 5 internal p. 3 of the said injury report that the injury occurred in field area and was attributable to military service. This endorsement in the injury report is dated 06.08.1987. After his initial admission to the hospital and treatment, the first medical board which downgraded the applicant was held on 15.10.1987.

6. The applicant continued to function in low medical category on account of ibid injury and was finally discharged in the rank of a Subedar on 28.02.2003 in low medical category (S₁ H₁ A₂ P₁ E₁). As per the terms and conditions of service, a subedar is required to serve for 28 years or till attainment of 50 years of age, whichever is earlier, in terms of para 163(a) of Regulations for the Army, 1987 (Revised). As submitted by the respondents in their affidavit-in-opposition (A/O) para 4(ii), the applicant had attained the age of 50 years on 16.02.2003 and

therefore, retired on the last day of February, 2003 i.e. 28.02.2003. Therefore, it is quite evident that the applicant was not discharged prematurely.

7. At the time of discharge the applicant was examined by a Release Medical Board (RMB) as is done for all those who are in low medical category at the time of their retirement. We have examined the original copy of the RMB proceedings dated 12.11.2002 held at 155 Base Hospital which was submitted to us by the respondents in a sealed cover after it was called for. As per the endorsement made in para 2(a) of part III of the ibid release medical board, it is clear that the applicant's disability on account of the ibid injury was held as attributable to military service. This medical board has relied upon the remarks of Brigade Commander on the injury report as endorsed on 06.08.1987 and has made a note to this effect in para 2(b) of part III of the ibid medical board proceedings. We have also observed that as per para 4 of part III of the ibid medical board proceedings, the applicant has been awarded 30% disability for life on account of the said injury.

8. Although the respondents did not annex a copy of the medical board proceedings, we find that respondent No. 7 (AGIF) has in their A/O annexed a copy of the said medical board proceedings as annexure R-11. That notwithstanding, we have perused the original medical board proceedings as well and the above endorsement by the medical board authorities are very clear.

9. Despite the position being so clear, we find that the respondents in their A/O {para 4(iii)} have taken a plea that the PCDA(P) rejected the claim for disability pension on the ground that the injury sustained by the applicant had no connection with duty and therefore he could not be entitled to any disability pension. The respondents in their A/O have all through maintained that the applicant met with an accident while travelling in a cycle and the circumstances of injury had no casual connection with duty or service and for that reason the disability pension was not granted to him.

10. Being aggrieved and after obtaining liberty from the Hon'ble Orissa High Court, the applicant had preferred an appeal before the Army Authorities for the first time for disability pension on 26.02.2011 which was rejected by Army HQ vide their letter dated 27.09.2011 which was communicated to the applicant by the respondent No. 5 (ASC Records) (Annex. A-13). Very surprisingly, the authorities while considering his case in the Appellate Committee on First Appeal have rejected the prayer for grant of disability pension on the ground that the injury sustained on 15.05.1987 had no casual connection with military service and very strangely it also mentioned that the RMB has appropriately held the disability as neither attributable nor aggravated by military service. The relevant portion of the said rejection is quoted below:-

"1. With reference your letter No. JC-219638/Apl/DP-iii dated 20 Jul 2011, it is stated that the Appellate Committee on First Appeal (ACFA) has carefully considered the appeal dated 26 Feb 2011 submitted by above named individual in the light of relevant rules and administrative/medical provisions and has rejected the appeal to the extent indicated below:-

<i>Ser</i>	<i>Disability(ies)</i>	<i>Reasons</i>
<i>1</i>	<i>CRUSH INJURY RT LOWER LIMB (OPTD)</i>	<i>The injury sustained by the individual in an RTA on 15 May 1987, with a civil truck is not attributable to military service since it has no casual connection with military service. There had been no deterioration of disability after the accident therefore, RMB has appropriately held the disability as neither attributable to nor aggravated by Military Service.</i>

11. The learned Advocate for the applicant Mr. Pradhan brought to our notice that the endorsement that 'the RMB had not considered it as attributable to military service' is factually incorrect which is evident from endorsement made by the medical authorities of the said RMB as could be seen from original records that are available. Therefore, the Appellate Committee, as submitted by him, has not applied its mind nor gone into the records before rejecting his appeal.

12. Being aggrieved with such rejection, the applicant filed the second appeal before the Second Appellate Committee in Ministry of Defence on 05.12.2011 (annex. A-14). He waited for more than six months but got no response with regard to his second appeal. Therefore, the applicant was constrained to file this OA.

13. The respondents in their A/O have continued to emphasise that the applicant being in low medical category since the time when he was a Havildar was being employed in sheltered appointment, although there is no document to substantiate. To the contrary, we find from the details of field and operational service as endorsed in the introductory page of the Release Medical Board proceedings, the applicant has been serving in various operational/field condition since 1990 onwards.

14. The next issue that was raised by Mr. Dipak Kumar Mukherjee, the learned counsel for the respondents, was that the circumstances of injury which caused this disability had no casual connection with duty since the applicant at that point of time on 15.05.1987 was proceeding on a bi-cycle for his personal work. He further submitted that the applicant served his full tenure as per the terms and conditions of his service and therefore there was no shortfall in his service on account of medical problem. Under such circumstances, Mr. Mukherjee insisted that would not be eligible for any disability pension. That besides, Mr. Mukherjee also brought to our notice that the decision on his Second Appeal is still pending with the Ministry of Defence and it would be appropriate for the applicant to exhaust that option of redressal before his case could be considered by this Tribunal. Mr. Pradhan, however, rebutted to this aspect by saying

that he waited for more than six months for the MoD to respond to the Second Appeal before he filed this OA. Therefore, he would prefer to abide by the decision of this Tribunal.

15. Mr. Mintu Kumar Goswami, learned counsel for the respondent No. 7 (AGIF) argued on the point that this applicant had completed his tenure of service as per the terms and conditions of his service and retired after attaining the stipulated age for retirement which was 50 years. Therefore, although he was in low medical category and presumably on account of an attributable injury, there is no provisions in the Rules to give him any disability grant from the AGIF. The AGIF Rules do not permit any such grant to a soldier who served his full tenure of service before retirement.

16. We have considered the affidavits and documents submitted by both sides. We have also perused the original documents (Release Medical Board proceedings and the Court of Inquiry documents for injury) in details. We have also heard the arguments put forth by the learned counsel for the applicant, the respondent Nos. 1 to 6 and the respondent No. 7. We very clearly observe that there is absolutely no doubt on the issue that the applicant indeed suffered an injury on 15.05.1987 for which he remained in low medical category till he retired on 28.02.1003. It is abundantly clear that the injury thus sustained was attributable to military service and occurred in field area since at that point of time the unit of the applicant was committed in Op Trident in Amritsar area. It is surprising as to how could the authorities, especially the PCDA(P) remained blind to the findings and opinion of a Court of Inquiry which was concurred by the Brigade Commander who in no uncertain terms had endorsed that the injury was attributable to military service and occurred in field.

17. That besides, the opinion of the medical authorities in Release Medical Board is very clear that the disability was attributable to military service and held at 30% for life. The PCDA(P), it appears, not only sat on judgement and the opinion of the Medical Board which was duly constituted and authorized by higher authorities but also went beyond to question the wisdom of a Court of Inquiry that was duly convened by a Brigade Commander, conducted by a

Board of Officers, opined by the Presiding Officer and finally approved by the convening authority who was the Brigade Commander himself.

18. Such highhanded and arbitrary decision by the PCDA(P) to reject all valid opinions in the documents of higher executive authorities and replace them with endorsement of their personal views to reject the opinion of board of officers is highly improper. The sufferings on account of non-receipt of disability pension have been caused purely due to highhanded arbitrary action by some authorities of the PCDA(P). We are of the view that the respondent No. 1 must take note of such action of officials of PCDA(P) causing avoidable injustice. We are thus inclined to levy interest on arrears of disability pension.

19. We also observe with surprise that the First Appellate Committee has ignored the endorsement made in the Release Medical Board proceedings and had replaced them with their own finding as is evident from Army HQ letter dated 27.09.2011 (annex. A-13) which has been quoted earlier in para 10 of this order. In fact, we observe that the reasons mentioned for rejecting the appeal of the applicant are factually incorrect to a great extent since the documents speak otherwise. This appellate committee has acted in a very routine manner without much application of mind.

20. It is quite clear that the applicant has retired on completion of 50 years of age which is in accordance with the terms and conditions of service in the rank of a Subedar. Therefore, he under no circumstances has retired prematurely or his service was cut short on account of any medical disability . Therefore, all his claim with the respondent No. 7 i.e. AGIF would lie under the existing rules being adopted by the AGIF in such cases.

21. The application is thus allowed on contest without costs with following directions:-

- (a) The respondent No. 1 is directed to issue suitable instructions to the PCDA(P) to issue PPO for disability pension.

(b) The respondent No. 5, PCDA(P) shall work out the disability pension amount and shall issue PPO and commence payment of such pension as soon as possible but not later than 60 days from the date of receipt of this order. The applicant shall be entitled to arrears with effect from 1st March, 2003 with 12% p.a. interest.

(c) The AGIF (Respondent No. 7) shall reconsider their earlier disbursement to the applicant, considering that the petitioner now stands vindicated with his disability being accepted as "Attributable to military service".

22. The original documents submitted by the respondents be returned to them on proper receipt.

23. Let a plain copy of this order be handed over to the learned Advocates for both the sides.

(LT GEN KPD SAMANTA)
MEMBER (ADMINISTRATIVE)

(JUSTICE RAGHUNATH RAY)
MEMBER (JUDICIAL)