

**(20) 06 AFT CK 0002**

**Armed Forces Tribunal Principal Bench, New Delhi**

**Case No:** Original Application No. 103 Of 2018

Daya Ram

APPELLANT

Vs

Union Of India And Others

RESPONDENT

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**Date of Decision:** June 1, 0020

**Hon'ble Judges:** Sunita Gupta, J; B.B.P. Sinha, Member (A)

**Bench:** Division Bench

**Advocate:** A.K. Trivedi, Shyam Narayan

**Final Decision:** Disposed Of

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### **Judgement**

1. The applicant, Ex. Hony. Capt. Daya Ram, through the medium of the instant Original Application is seeking the following reliefs:

(a) Declare the whole action of the respondents as illegal and arbitrary in discontinuing the disability element of pension wef 26/10/1996

which is against the rule and judicial pronouncement on the subject.

(b) Direct the respondents to consider the claim of applicant for continuation of disability element of pension wef 26/10/1996 and

appropriate orders may kindly be issued for rounding off of disability element of pension to 50% in view of GOI notification dated

31/01/2001 and in view of judgment of Honible Supreme Court of India in the case of UOI & Ors Vs Ram Avtar Civil Appeal No.418/2012

decided on 10/12/2014, consequently the applicant may be granted disability element of pension @50% wef 01/01/1996 along with arrears

of pension.

(c) Any other order as may be deemed fit and proper in the facts and circumstances of the case.

2. Briefly stated facts of the case are that the applicant was enrolled in Carps of Signals in Indian Army on 10.02.1962 and was discharged on 31.05.1995 in Low Medical Category on completion of terms of engagement. At the time of retirement from service, the Release Medical Board (RMB) held at 174 Military Hospital C/o 56 APO on 26.10.1994 assessed his disability 'OSTEO ARTHRITIS BOTH KNEES 715 V-67' @ 20% for two years but opined the disability to be aggravated by military service due to stress and strain of military service. Accordingly, the Principal Controller of Defence Accounts (Pensions), Allahabad has granted disability element for two years. Thereafter, the applicant's Re-Survey Medical Board (RSMB) held at Base Hospital, Delhi Cantt on 26.07.1996 and assessed his disability @20% for five years. The PCDA (P) has rejected the claim of the applicant for grant disability element vide letter dated 28.02.1997 on the ground that the disablement has been reviewed and reassessed at less than 20% (11-14%) for five years which was communicated by the respondents vide letter dated 18.04.2017. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The diseases of the applicant were contracted during the service, hence it is attributable to and aggravated by Military Service. The act of overruling the recommendations of RSMB by higher competent authority of PCDA (P) was wrong and should be set aside. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension @20% and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. 'OSTEO ARTHRITIS BOTH KNEES 715 V-67' has been regarded as 20% for two years by RMB as aggravated by military service and the PCDA (P) has granted disability element accordingly. Thereafter, disability of the applicant has been regarded by the RSMB held on 26.07.1996 as 20% for five years. However, PCDA (P) has rejected

the claim of the applicant on the ground that disablement has been reviewed and reassessed at less than 20% (11-14%) for five years w.e.f. from 26.10.1996 to 25.07.2001. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB as well as RSMB proceedings. The only question which needs to be answered is whether the PCDA (P) has power to overrule the opinion of the RMB for the disability?

6. This is a case where the RMB had conceded the disease i.e. 'OSTEO ARTHRITIS BOTH KNEES 715 V-67' of the applicant as aggravated by

Military Service. Thereafter, disability of the applicant has been regarded by the RSMB held on 26.07.1996 as 20% for five years. However, PCDA

(P) has rejected the claim of the applicant on the ground that disablement has been reviewed and reassessed at less than 20% (11-14%) for five years

w.e.f. from 26.10.1996 to 25.07.2001. However, it is clear that the higher competent authority i.e. PCDA (Pensions) has not physically examined the

applicant. The Hon'ble Apex Court has made it very clear that the opinion of the Medical Board cannot be overruled by higher chain of command

without physical medical examination of the patient by a higher Medical Board. In this context the operative portion of the judgment of Hon'ble Apex

Court in the case of Ex. Sapper Mohinder Singh vs. Union of India in Civil Appeal No 104 of 1993 decided on 14.01.1993 is quoted below:-

From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very

narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts

(Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In

the present case, it is nowhere stated that the Applicant was subjected to any higher medical Board before the Chief Controller of Defence

Accounts (Pension) decided to decline the disability pension to the Applicant. We are unable to see as to how the accounts branch dealing

with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical

Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core.

7. Thus we set aside the decision of PCDA (Pensions) for rejecting the claim of the applicant for grant of disability element and are of the considered

opinion that the applicant was entitled to disability element for disease i.e. 'OSTEO ARTHRITIS BOTH KNEES 715 V-67' @20% for five years

from 26.10.1996.

8. Since the applicant's RSMB was valid for five years w.e.f. 26.07.1996, hence, the respondents will now have to conduct a fresh RSMB for him to

decide his future eligibility to disability pension.

9. In view of the above, the Original Application No. 103 of 2018 deserves to be partly allowed, hence, partly allowed. The impugned order dated

28.02.1997 passed by the PCDA (Pensions), Allahabad which was communicated vide letter dated 18.04.2017, enclosed as Annexure A-3 of the

Original Application, is set aside. Since, the applicant's RSMB was valid for five years w.e.f. 26.07.1996 and in view of decision of the Hon'ble

Supreme Court in Union of India Vs. Tarsem Singh, reported in 2009 (1) AISLJ 371 with regard to law of limitation, the applicant is not entitled for the

arrears of disability element. The respondents are directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of

disability pension. Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order.

10. No order as to costs.

11. Pending application(s), if any, also stand disposed of.

Pronounced in the open court on 19th 2020.