

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 554/2024

1. Union of India th. its Secretary to Appellant(s)/Petitioner(s)
Govt. of India, Ministry of Defence,
South Block, New Delhi-110011.
2. Chief Army Staff, Integrated HQ
Ministry of Defence (Army)
Adjutant General Branch, Add.
Directorate, General Personnel
Services, DHQ PO New Delhi-
110011.
3. Principal Controller of Defense
Accounts(Pensions), Draupadi Ghat,
Allahabad, Uttar Pradesh-211014
4. Officer Incharge Records, Punjab
Regiment Record PIN 908761 C/O
56 APO

Through: Mr. Suneel Malhotra, CGSC

vs

Ex. Nb. Sub. Jaswant Singh No. JC428359L Respondent(s)
S/o Sh. Prem Singh
R/O Village and P.O. Nonial, Tehsil
Nowshera, District Rajouri.

Through: Mr. B. S. Sarmal, Advocate

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT(ORAL)
20.08.2025

Sanjeev Kumar 'J'

1. This petition, filed by the Union of India and others under Article 226 of the Constitution of India, arises out of an order/judgment dated 23.02.2023 passed by the Armed Forces Tribunal, Regional Bench Srinagar, at Jammu [“**the Tribunal**”] in OA No. 513/2019 titled *Jaswant Singh Vs. Union of India and Ors.*, whereby the

Tribunal has held the respondent entitled to grant of disability element of pension at the rate of 50% to be rounded off to 75% for the intervening period i.e. 01.01.2003 to 17.03.2013.

2. Briefly stated, the facts leading to the filing of this petition, as can be gathered from the impugned judgment, are that the respondent, who was enrolled in Indian Army on 28.08.1976, was discharged from service in low medical category on 31.12.2000 with disability “GSW (LT) LEG AND FRACTURE TIBIA FIBULA AND OSTEOMYELITIS” assessed at 50% for two years. The injuries sustained by the respondent were certified to have been incurred in operational activities conducted by the petitioners and, therefore, attributable to military service.
3. Unfortunately, the opinion of the Medical Board was not accepted by the Principal Controller of Defence Accounts (PCDA), who, on its own, declared the disability suffered by the respondent neither attributable to nor aggravated by military service. This is how the benefit of disability element of pension was denied to the respondent.
4. It seems that the respondent initially accepted his fate and did not agitate his right to receive disability pension before the competent authority. It was only on 04.05.2011, the respondent filed the first appeal before the Appellate Committee, challenging the decision of PCDA. The appeal was accepted and the petitioners were directed to hold Re-assessment Medical Board to assess the further disability of the respondent. Accordingly, the re-Assessment Medical Board of the

respondent was conducted on 18.03.2013 and he was found suffering from the same disability and at same degree. On the basis of the opinion rendered by Re-assessment Medical Board, the disability element of the disability pension at the rate of 50%, to be rounded off to 75%, was released in favour of the respondent by the petitioners with effect from 18.03.2013. The disability element of pension was also released for the period of two years from 31.12.2000.

5. Feeling aggrieved by the denial of benefit of disability pension for the intervening period i.e. from 01.01.2003 till 17.03.2013, the petitioner approached the Tribunal by way of OA No. 513/2019. It is this OA, filed by the respondent, which has been allowed by the Tribunal in terms of the judgment impugned.
6. The impugned judgment is challenged by the petitioners primarily on the ground that the Tribunal has failed to appreciate that there was delay of 11 years in approaching the Appellate Authority and, therefore, the benefit of arrears of disability pension ought to have been restricted by the Tribunal to three years prior to filing of the appeal by the respondent before the Appellate Authority.
7. Mr. Suneel Malhotra, learned CGSC submits that though the petitioners do not dispute the entitlement of the respondent to the disability pension, which is to be calculated at 50%, to be rounded off to 75%, yet the arrears cannot be paid for the entire intervening period.

8. *Per contra*, Mr. B. S. Sarmal, learned counsel for the respondent would submit that in the instant case the disability pension was denied to the respondent on the erroneous decision taken by PCDA in supersession of the medical opinion and, therefore, no premium can be put on such illegality by restricting the arrears only to three years prior to the filing of appeal before the Appellate Authority.
9. Having heard learned counsel for the parties and perused the material on record, we find that the facts are not much in dispute in this case. Indisputably, when respondent was invalidated out of army service on account of disability on 31.12.2000, the Board had assessed his disability at 50% for two years, attributable to the military service. The PCDA had no legal right or authority to sit over the opinion of the Medical Board and deny the disability element of the pension to the respondent without even seeking fresh opinion from the higher medical authority.
10. Be that as it may, the PCDA denied the benefit of disability element of pension to the respondent by taking a view that the disability suffered by him was neither attributable to nor aggravated by the military service. This happened in the year 2000 and, therefore, the cause of action to approach the Appellate Authority or for that matter competent Court of law accrued to the respondent in the year 2000. He remained quiet for almost a decade and approached the Appellate Authority only on 04.05.2011. It is true that the Appellate Authority found merit in the appeal and directed re-assessment of the

respondent by the Medical Board. The Re-assessment Medical Board found the respondent suffering from a disability of 50%, to be rounded off to 75% and attributable to military service. This is how the petitioners held the respondent entitled to the disability element of the pension for an initial period of two years i.e. from 31.12.2000. The respondent was also held entitled to disability pension with effect from 17.03.2013. The benefit of disability pension for the intervening period from 01.01.2003 to 17.03.2013 was, however, denied.

11. It is not in dispute that the respondent approached the Appellate Authority against the decision of PCDA taken in the year 2000 by way of an appeal filed on 04.05.2011. Since the appeal was allowed in favour of the respondent and he was held entitled to the disability pension, as such, ordinarily, there was no reason or justification to deny him the benefit of disability pension throughout.
12. However, having regard to the fact that there was some indolence and negligence on the part of respondent to approach the Appellate Authority within a reasonable time, the judgment passed by the Supreme Court in case of *Shiv Dass Vs. Union of India & Ors.*, 2007 (9) SCC 274, decided on 18.01.2007 would become applicable, restricting the arrears to three years prior to approaching the authorities by way of an appeal.

13. Without delving much on the issue and having regard to the fair stand taken by both the sides, this petition is **disposed of** by directing as under:-

- (i) That the respondent shall be entitled to arrears of disability element of pension with effect from 04.05.2008 i.e. three years prior to filing of appeal till 17.03.2013.
- (ii) The arrears for the aforesaid period shall be worked out and released in favour of the respondent within a period of three months from today, failing which, the same shall become payable along with interest @ 8% per annum from the date of this order.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

Jammu
20.08.2025
Vishal Sharma

Whether the judgment is reportable:

Yes