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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.16086 of 2014
Date of Decision: 23.02.2015.**

Jaswant Singh

.....Petitioner

Vs.

Union of India & others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. S.K. Rattan, Advocate
for the petitioner.

Mr. Brijeshwar Singh Kanwar, Advocate
for respondents-UOI.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

SURYA KANT, J. (ORAL)

The petitioner served the Indian Army from 21.04.1984 till he was invalided out on 06.09.1993. He was not dealt with fairly by the Army Authorities while rejecting his claim for disability pension and the Armed Forces Tribunal, Chandigarh Regional Bench (hereinafter referred to as 'the Tribunal'), has also vide its order dated 23.12.2010 (Annexure P-12) dismissed the petitioner's Original Application.

[2]. The short question that arises for consideration is whether petitioner is entitled to disability element of pension throughout his life or it has to be restricted from the date of his discharge till

05.06.1996 only as ordered by the Tribunal?

[3]. The petitioner at the time of joining the Army on 21.04.1984 was undisputably found medically and physically fit. No ailment was detected or reported at that time.

[4]. After more than 9 years, Re-Survey Medical Board was held on September 6, 1993 who categorically opined that there was no disability was detected before entering the service. The petitioner was however found suffering from the following two disabilities:-

4	What is present degree of disablement as compared with a healthy person of the same age and sex? (Percentage will be expressed as Nil or as follows:-1-5%, 6-19%, 11-14%, 15-90% and thereafter in multiples of ten from 10% to 100%.		
Disability (as numbered in question I, part II)	Percentage of disablement	Probable duration of this degree of disablement	Composite assessment (all disabilities)
1. ADJUSTMENT REACTION-309	15 TO 19% Fifteen to nineteen	Two years	(1) and (2) composite 30%
2. STRICTURE URETHRA	20% Twenty P.C		
5	Is the Individual in need of further treatment and, if so, of what nature and for how long is it likely to be required- NO		

[5]. Based upon the medical opinion, the petitioner was boarded out from the Military Service and his case was forwarded for disability pension to Controller of Defence Accounts (Pension), Allahabad, (for short 'the CDA') who vide its letter dated 01.03.1994 (Annexure P-3) though acknowledged the fact that the disability No.2, namely, Stricture Urethra "is attributable to service but it being less than 20%, the petitioner was not held entitled to the disability

pension.

[6]. The petitioner filed an appeal against the CDA's decision whereupon again a Re-Survey Medical Board was held on 05.06.1996 (Annexure P-6). The Re-Survey Medical Board opined as follows with respect to petitioner's disability claim:-

“15. Disability (ies) which the original invaliding/release medical board found to be present:

(1)ADJUSTMENT REACTION (ICD-309) (ii) STRICTURE URETHRA (ICD-593)

16. Previous assessment(s) of disablement:-

Disability(ies) – Percentage (in words) of assessment as

	<i>Recommendation by the medical board</i>	<i>Accepted by the pension sanctioning auth</i>	<i>Period of assessment</i>	<i>Whether the disability was accepted as attributable or aggravated by service</i>	<i>Authority PC/PPO</i>
<i>As per column 15 above</i>	30%	(15-19%)	06.09.93 to 06.09.96	Attributable	<i>Rejected vide CDA(P) Allahabad letter No G3/94/3058/XII dated 01.03.94</i>

[7]. Thereafter again a Re-Survey Medical Board was held on 29.09.2001 (Annexure P-8) which opined as follows on the petitioner's disability claim:-

“15. Disability (ies) which the original invaliding/release medical board found to be present:

(1)ADJUSTMENT REACTION (ICD-309) (ii) STRICTURE URETHRA (ICD-593)

16. Previous assessment(s) of disablement:-

Disability(ies) – Percentage (in words) of assessment as

<i>Disability (ies)</i>	<i>Recommendation by the medical board</i>	<i>Accepted by the pension sanctioning auth</i>	<i>Period of assessment</i>	<i>Whether the disability was accepted as attributable or aggravated by service</i>	<i>Authority PC/PPO</i>
<i>As per column 15 above</i>	<i>30%</i> <i>Less than 20%</i>	<i>(15-19%)</i> <i>Less than 20%</i>	<i>06.09.93 to 06.09.96</i> <i>07.09.96 to 04.06.2001</i>	<i>Attributable</i> <i>-do-</i>	<i>Rejected vide CDA(P) Allahabad letter No G3/94/3058/XII dated 01.03.94</i>

[8]. It may thus be seen that though the Re-Survey Medical Board opined that the disability suffered by the petitioner was attributable to Military Service with composite percentage of 30%, yet the earlier decision taken by CDA dated 01.03.1994 was allowed to sit over the decision of Re-Survey Medical Board and consequently the claim of petitioner was rejected.

[9]. The petitioner then approached the Tribunal who has vide impugned order 23.12.2010 accepted his claim in part, holding him entitled to disability pension from the date of discharge i.e. 06.09.1993 till 05.06.1996 i.e. till the petitioner's claim was turned down by the Re-Survey Medical Board.

[10]. It would be appropriate at this stage to point out that the petitioner's disability was periodically reviewed by the Review Medical Boards and the last one held on 19.01.2009 (Annexure P-9) unfolds as under:-

“6. What is present degree of disablement as compared with a healthy person of the same age and sex?

(Percentage will be expressed as Nil or as

follows): 1-5%, 6-10%, 11-14%, 15-19% and thereafter in multiples of ten from 20% to 100%.

<i>Disability (as numbered in question I, part IV)</i>	<i>Percentage of disablement</i>	<i>Probable duration of this degree of disablement</i>	<i>Composite assessment (all disabilities)</i>
<i>1. ADJUSTMENT REACTION-309</i>	<i>11-14%</i>	<i>For life</i>	<i>Less than 20% (twenty percent for life)</i>
<i>2. STRICTURE URETHRA</i>			

[11]. The afore-said Medical Board proceedings further reveal that unfortunately no review was conducted with respect to second disability, namely, 'Stricture Urethra' though as regard to the first disability it was opined that its percentage was 11% to14% and it was life long. Even without re-assessment of the second disability, it was opined that “composite assessment” of disability was less than 20%.

[12]. Since the degree of disability suffered by petitioner was found less than 20% that the Tribunal or the Authorities have turned down his disability pension claim for the period beyond 05.06.1996.

[13]. Having heard learned counsel for the parties and after going through the medical record, we are satisfied that the petitioner is entitled to the disability element of pension throughout his life in view of the Re-Survey Medical Board opinion given in the year 2008 with respect to disability No.1 which the petitioner has suffered for life. The respondents have resisted the petitioner's claim on two

counts; firstly that the disability suffered by him is less than 20% and secondly that he is a pre-1996 retiree and can draw no advantage from the subsequent liberal Policies.

[14]. In our considered view, both the objections raised by respondents are misdirected and liable to be rejected for multiple reasons. Firstly, as per the Government of India Policy dated 31.01.2001 even if the percentage of disability is less than 50%, the same shall be reckoned as 50% for computing the disability element of pension. This is so evident from clause 7.2 of aforesaid policy which reads as follows:-

“7.2. Where an Armed Forces personnel is invalided out under circumstances mentioned in Para 4.1 above, the extent of disability or functional incapacity shall be determined in the following manner for the purposes of computing the disability element:-

<u>Percentage of disability as assessed by invaliding medical board</u>	<u>Percentage to be recokoned for computing of disability element</u>
<i>less than 50</i>	<i>50</i>
<i>between 50 and 75</i>	<i>75</i>
<i>between 76 and 100</i>	<i>100”</i>

[15]. Secondly, the applicability of these instructions in the case of pre-1996 retirees has been set at rest by the Hon'ble Supreme Court in **K.J.S. Buttar v. Union of India & others (2011) 11 SCC 429** laying down as follows:-

“14. In our opinion the appellant was entitled to the benefit of para 7.2 of the instructions dated 31.01.2001 according to which where the disability is assessed between 50% and 75% then the same should be treated as 75%, and it makes no difference whether he was invalided from service before or after 1.1.1996. Hence the appellant was entitled to the said benefits with arrears from 1.1.1996, and interest at 8% per annum on the same.

16. As per para-6 of these instructions/letter dated 16.5.2001, any person, who is in receipt of disability pension as on 1.1.1996 is entitled to the same benefit as given in letter dated 31.1.2001. Further as per para-7 of this letter w.e.f. 1.1.1996 the rates of War Injury element shall be the rates indicated in letter dated 31.1.2001. Thus, in our opinion in view of the instruction dated 31.1.2001 read with our opinion 16.5.2001, the appellant was entitled to the War Injury Pension. It is pertinent to state that reading of paras 6, 7 and 8 of the Notifications/Circular dated 16.5.2001 makes it absolutely clear that the said benefits were available to pre 1996 retirees also but the rates were revised on 31.1.2001 and the revised rates were made applicable to post 1996 retirees only. But subsequently by means of the Notification dated 16.5.2001 the revised rates were extended to pre 1996 retirees also.”

[16]. Thirdly, in **Sukhwinder Singh v. Union of India and others 2014(4) SCT 163**, wherein also the respondents banked upon their usual objection that the disability below less than 20%, the Apex Court strongly deprecated such like pleas and held thus:-

“6. We think that it is beyond cavil that a combatant soldier is liable to be invalided out of service only if his

disability is 20 per cent or above and there is a further finding that he cannot discharge duties even after being placed in a lower medical category. We are indeed satisfied to note that Rule 173 Appendix-II (10) postulates and permits preferment of claims even “where a disease did not actually lead to the member's discharge from service but arose within ten years thereafter.” We, just as every other citizen of India, would be extremely disturbed if the Authorities are perceived as being impervious or unsympathetic towards members of the Armed Forces who have suffered disabilities, without receiving any form of recompense or source of sustenance, since these are inextricably germane to their source of livelihood. Learned Counsel for the respondents has failed to disclose any provision empowering the invaliding out of service of any person whose disability is below 20 per cent. Indeed, this would tantamount to dismissal of a member of the Armed Forces without recourse to a court-martial which would automatically entitle him to reinstatement.”

[17]. Fourthly, once the Re-Survey Medical Board on 05.06.1996 (Annexure P-6) has opined that the composite disability of petitioner was 30%, it ought not to have been treated between 15% to 19% on the basis of a cryptic, arbitrary and one sided opinion given by CDA (Allahabad). The medical opinion once accepted, the degree of petitioner's disability was 30%. The last hyper-technical objection raised by the respondents to deny the benefit of disability pension to the petitioner also, therefore, falls flat.

[18]. For the reasons aforesaid, we allow this writ petition; modify the order passed by the Tribunal and accept the petitioner's claim for

the grant of disability from the date he was boarded out and for his entire life. The petitioner shall be entitled to arrears along with simple interest @7% p.a. which shall be paid to him within a period of three months.

[19]. Ordered accordingly.

(SURYA KANT)
JUDGE

February 23, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE