

2024:PHHC:155653-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-25125-2024
Reserved on: 18.11.2024
Pronounced on: 26.11.2024

Union of India and Ors.Petitioners

Versus

Ex. Ld. Anchal Singh and Anr.Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Ashish Chaudhary, Senior Panel Counsel
for the petitioners.

Ms. Roopan Atwal, Advocate and
Ms. Srishti Sharma, Advocate for
Mr. Navdeep Singh, Advocate
for respondent No. 1.

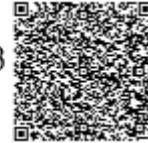
SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein-
Union of India, prays for the setting aside of the order dated 11.07.2019
(Annexure P-1), as passed by the learned Armed Forces Tribunal
concerned, whereby the claim of respondent No. 1 for the grant of
disability pension was allowed.

Factual Background

2. Respondent No. 1 was enrolled in the Army on 13.12.1965
and was discharged from service on 31.12.1985. At the time of his
discharge, the respondent was brought before the Release Medical

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disability “MULTIPLE RENAL CALCULI (RT) OPTD 592”, who opined qua the disability of the respondent being aggravated by military service and assessed the same @ 40 % for two years. The PCDA (A) Allahabad granted disability element at Rs. 24 per month.

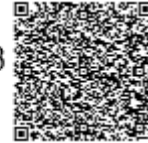
3. Thereafter, re-survey medical board of respondent No. 1 was held at 167 Military Hospital on 06.07.1987 which assessed his disability @ 40 % for five years besides the same being aggravated by military service. Further, re-survey medical board was held at Base Hospital Delhi Cantt on 10.09.1990, which held his disability as aggravated by military service besides assessed the same @ 40 % for five years.

4. Moreover, re-survey medical board of respondent No. 1 was again held at 167 Military Hospital on 22.11.1995 with disability being regarded as aggravated by military service besides the same being assessed @ 30 % for ten years by the medical board. However, the PCDA (P) Allahabad re-assessed the degree of disability as less than 20% (15 -19%) for five years.

5. Thereafter, the final re-survey medical board of respondent No. 1 was held at 167 Military Hospital on 28.12.2004. The re-survey medical board declared his disability as 'Attributable to Military service' and the degree of disability was assessed as less than 20 % (15% to 19%) for life.

6. Respondent No. 1 submitted first appeal dated 26.07.2016. However, the same was returned by stating that the entitlement of

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respondent No. 1 has already been accepted and the change in assessment may be processed for Review Medical Board with DGAFMS and not as first appeal for disability pension with ACFA.

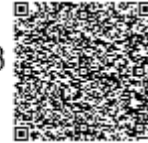
7. Thereafter, respondent No. 1 filed O.A., before the Tribunal concerned praying for grant of disability pension. The said O.A., became allowed vide order dated 11.07.2019. The operative part of the said order is extracted hereinafter.

“The learned counsel for the applicant argued, that as the medical board held in the year 2004 assessed his disability as static since last RSMB, the reduction from 30% to less than 20% is illegal. Learned counsel for the applicant has cited the case of MA 2247 of 2015 and OA 3674 of 2013 in Ex Risaldar Hoshier Singh Vs UOI and others decided by this Bench on 10.8.2015. Relevant extract is reproduced below :-

“5. We have gone through the proceedings of the Re-Survey Medical Board filed as Annexure A-1. Therein the Medical Board has found that the disability remained static. In this view of the matter, there was actually no justification for the Medical Board to reduce the disability of the petitioner less than 20%.”

There is substance in the submission of the learned counsel for the applicant and we find this case squarely covered by the above judgement. Accordingly, we quash the letter dated 24.04.1996 (Annexure A-3) and offending part of RSMB (A-5) and hold that the applicant is entitled to 30% disability for life w.e.f 10.09.1995 and rounding off to 50% from 01.01.1996. The arrears would however be

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restricted to three years preceding the filing of application, i.e. 17.12.2018.....”

8. Feeling aggrieved from the aforesaid order as passed upon the O.A. (supra), by the learned Armed Forces Tribunal concerned, the petitioner-Union of India has filed thereagainst the instant writ petition before this Court.

Inferences of this Court.

9. In the instant case, a perusal of the records reveal that the Re-survey Medical Board held at 167 Military Hospital on 22.11.1995 regarded the disability of respondent No. 1 as 'aggravated by military service' and was assessed @ 30 % for ten years. However, the PCDA (P) Allahabad **interfered with** the said opinion and assessed the disability of respondent No. 1 as less than 20 % (15-19%) for five years. Further, the re-survey medical board held in the year 2004 assessed the disability of respondent No. 1 as static since last RSMB.

10. It is extremely alarming that though the opinion of the medical board, thus evidently falls within the domain of an expert opinion, wherebys, it may be impermissible to be reviewed. Moreover, when therebys an indefeasible right became vested in respondent No. 1, to claim the fullest complement of the disability pension. However, again and that too enigmatically, the apposite expert opinion was discarded. Contrarily, the opinion of the Medical Advisor (Pension) was accepted, wherebys, he declared that the disability entailed upon the present respondent as less than 20%. The acceptance of the opinion of the Medical Advisor (Pension) when he is not shown to be an expert,

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whereas, the expert opinion rather was the opinion of the re-survey medical board, which assessed the disability of the present respondent no.1 in the percentum, wherebys, he became conferred with an indefeasible right to receive the fullest complement of the disability pension. Therefore, in the petitioner, accepting an unacceptable review by the Medical Advisor (Pension), of the otherwise reverereable opinion, as became formed by the medical board concerned, thus tantamounts to a gross illegality.

11. In consequence, this Court finds no reason to interfere with the impugned order, wherebys, the respondent No.1 was held entitled to 30% disability pension for life w.e.f. 10.09.1995 and rounding off to 50% from 01.01.1996.

12. The writ petition with observation(s) aforesaid is dismissed accordingly.

13. Since the main case itself has been decided, thus, all the pending application(s), if any.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

26.11.2024
kavneet singh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No