



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-26257-2024

Reserved on: 26.11.2024

Pronounced on: 29.11.2024

Union of India and Ors.

.....Petitioners

Versus

Ex. Sergeant Harjeet Singh Marwaha and Anr.

....Respondents

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

Argued by: Mr. Shubham Thakur, Advocate
for the petitioners.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein-
Union of India, prays for the setting aside of the order dated 04.01.2024
(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 Indian Air Force on
17.02.1973 and was discharged from service on 28.02.1993. At the time
of his discharge, the respondent was brought before the Release
Medical Board, being placed in low medical category, on account of
disability “*Medial Meniscal Tear (LT) (Optd)*”, who opined qua the
disability of the respondent being *attributable to military service* and
assessed the same @ 20 % for five years w.e.f. 01.03.1993 to
01.11.1997.



3. Thereafter, re-survey medical board of respondent No. 1 was held at Military Hospital, Ambala in the year 1997, which held the disability of respondent No. 1 to be static besides assessed the same @20 % for five years. Further, re-survey medical board of respondent No. 1 was held in the year 2002 and this time the disability of respondent No. 1 was assessed @ 15-19% for life.

4. The disability element claim of respondent No. 1 was rejected, thus on the ground that the supra disability of respondent No.1, was less than 20 %.

5. Feeling aggrieved, respondent No. 1 filed O.A., before the Tribunal concerned, whereby he cast a challenge to the afore rejection order. The said O.A. was allowed vide order dated 04.01.2024. The operative part of the said order is extracted hereinafter.

*“7. The crux of the law laid down in the judgments cited supra is that an authority like Principal Controller of Defence Accounts cannot sit over the expert opinion given by a duly constituted Medical Board. Considering the law laid down by the Hon'ble Supreme Court and also the attending circumstances, the rejection of the claim of the applicant for disability pension is neither legally nor factually sustainable. **The applicant, therefore, is entitled to the grant of disability pension.**”*

6. 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.

7. For adjudication of the instant matter, it is pertinent to extract the relevant contents of Re-survey medical board of respondent No. 1, held on 10.05.2002 (Annexure P-3).



Disabilities	As recommended by medical board	As accepted by the Pension Sanctioning Authority	Period of assessment	Whether the disability was accepted as attributable by service
Same as in Col No. 15	20 %	Less than 20%	02.11.1997 to 23.10.02	Attributable

8. A perusal of the afore reveals that in the earlier period of assessment from 02.11.1997 to 23.10.2002, the Re-survey Medical Board assessed the disability of respondent No. 1 as 'attributable to military service' besides was assessed @ 20 % for five years. However, the Pension Sanctioning Authority concerned, **interfered with** the said opinion and assessed the disability of respondent No. 1 as less than 20% for five years. Further, a perusal of para No. 3 of the impugned order reveals that the Classified Specialist's opinion on 09.05.2002 had declared the disability of respondent No. 1 **as static** since last Re-Survey Medical Board.

9. 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, 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 revereable opinion, as became formed by the medical board concerned, thus tantamounts to a gross illegality.

10. In consequence, this Court finds no reason to interfere with the impugned order, wherebys, the respondent No.1 was held entitled to disability pension w.e.f. 02.11.1997 and further his becoming declared to become entitled to the rounding off the same to 50% as per the law laid down by the Apex Court in case titled as **Union of India and Others Vs. Ram Avtar**, to which **Civil Appeal No.418 of 2012** became assigned.

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

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

29.11.2024
kavneet singh

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