HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Reserved on: 12.08.2025
Pronounced on:19.08.2025

WP(C) No.1633/2024

1. Union of India through its Secretary to Government of India, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), Adjutant General's Branch, Additional Directorate General Personnel Services, DHQ, PO New Delhi-110011
3. The Principal Controller of Defence Accounts (Pension). Draupadi Ghat, Allahabad, Uttar Pradesh-211014
4. The Record Officer-JAKLI, Srinagar.

...Petitioners(s)

Through:- Mr. Ranjit Singh Jamwal, CSGC

Versus

No.9081556-P Ex Naik (TS), Shukar Singh
S/o Late Shri Gandharb Singh R/o Village and Post Office Parial, Tehsil Marh, District Jammu (J&K) Record Office-J&K Li Infantry, Srinagar.

...Respondent(s)

Through:- Mr. Chakshu Sharma, Advocate

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

JUDGMENT

Sanjeev Kumar "J"

1. By this writ petition filed under Article 226 of the Constitution of India, Union of India and three others seek to throw challenge to an order and judgment dated 23rd December, 2021 passed by the Armed Forces Tribunal, Regional Bench Srinagar at Jammu

["the Tribunal"] in OA No.215 of 2019 titled Shukar Singh v. Union of India and others, whereby the Tribunal has allowed the OA filed by the respondent and quashed orders dated 24.09.1999 and 16.12.2002, both impugned in the OA. The respondent has been held entitled to disability pension w.e.f. 25th June, 2014 providing further that he shall be entitled to the arrears only for a period of three years prior to the date of filing of the OA i.e. 18.04.2019.

2. The impugned judgment of the Tribunal is assailed by the petitioners on the ground that the Tribunal has failed to consider that the disability of the respondent was not attributable but only aggravated by the military service and the same was less than 20% for ten years and in the subsequent Re-Survey Medical Board also the disability of the petitioner was assessed less than 20%. The Tribunal without considering this aspect of the matter held the respondent entitled to disability element of the pension. The Tribunal also did not appreciate that the opinion of the Medical Board consisting of experts was not amenable to judicial review by the Court unless there was strong medical evidence on record to dispute such opinion. The Tribunal also did not appreciate that the OA filed by the respondent after a period of seventeen years of the cause of action was hit by delay and laches.

3. *Per contra*, learned counsel appearing for the respondent would simply support the judgment passed by the Tribunal. It is argued that

the Tribunal has taken care of all aspects of the matter including the delay in approaching the Tribunal. It is submitted that having regard to the fact that the respondent had approached the Tribunal with his grievance after inordinate delay, the Tribunal restricted the arrears of disability element of pension to three years prior to the filing of the OA before the Tribunal.

4. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the Tribunal is perfectly legal and does not call for any interference by us in the exercise of our extraordinary writ jurisdiction.

5. Indisputably, the respondent joined the Indian Army on 18th February, 1976 in a fit medical condition. During the course of his service, the respondent incurred disability of Lumbar Spondylosis with backache and was finally discharged on completion of his tenure on 29th February, 1992. At the time of his discharge, disability of the respondent was assessed @ 6 to 10% permanent for a period of ten years and the same was considered aggravated by military service. However, the PCDA(P), Allahabad accepted his disability at the rate of 20% for five years and granted him disability element of pension. Since the decision of PCDA(P), Allahabad was to the benefit of the respondent, as such, the same was happily accepted by the respondent. The respondent was brought before the Re-Survey Medical Board [“RSMB”], held on 26.09.1996 to assess his disability. The RSMB

examined the respondent and assessed his disability @ 20% for ten years. However, the PCDA(P), Allahabad instead of accepting the expert opinion of RSMB reduced the disability to 11-14% for five years i.e. w.e.f. 26.12.1996 to 05.09.2001. This was done by the PCDA(P), Allahabad without indicating any reason and without obtaining any expert opinion in the matter. The respondent was lastly brought before the RSMB on 04.06.2002 for re-assessment of his disability. This time, RSMB assessed his disability @ 11-14 % for life. On the basis of this RSMB decision, the respondent was not held entitled to disability element of pension after 26.12.1996.

6. Feeling aggrieved, the respondent filed OA No. 215 of 2019 before the Tribunal. The OA was contested by the petitioners herein and in the reply affidavit filed, the stand taken was that though the disability suffered by the respondent was aggravated by military service, as opined by the Medical Board, yet he was not held entitled to disability element of pension on the ground that his disability was less than 20%. It was submitted that the opinion of the Medical Board, being an expert body, was accepted and must be respected. The Tribunal having considered the OA in the light of rival contentions of the parties and having regard to the legal and factual position obtaining in the matter, came to the conclusion that the decision of the PCDA(P), Allahabad, in not accepting the opinion of the RSMB, was without any authority and competence. The Tribunal, thus, held entitled the respondent to disability element of pension as per the disability

assessed by the RSMB held on 06.09.1996. It is in these circumstances, the OA filed by the respondent came to be allowed.

7. In the given admitted factual matrix, the only short question that begs determination in this petition is whether decision of the Medical Board consisting of experts with regard to assessment of disability could be reviewed, varied or altered by PCDA(P), Allahabad, an authority responsible for sanctioning pension in favour of the members of the Indian Army.

8. It is trite law that the opinion of the duly constituted Medical Board containing panel of expert doctors should ordinarily be given primacy and credence. Dwelling upon the importance and relevance of the opinion of the Medical Board, Hon'ble the Supreme Court **in Secretary, Ministry of Defence and others v. A.V. Damodaran (dead) through LRs (2009) 9 SCC 140** held thus:

> "8. When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medical category which is lower than `AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/invalidating medical board. The said release/invaliding medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the

> duration for which the disability is likely to continue. The same is assessed/recommended in view of the disease being capable of being improved. All the aforesaid aspects are recorded and recommended in the form of AFMSF- 16. The Invalidating Medical Board forms its opinion/recommendation on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and of course, the physical examination of the individual.
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> 9. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the matter for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service."

9. In view of the clear legal position obtaining on the subject, it can be held without any hesitation that power and scope of PCDA(P), Allahabad is very limited and normally the jurisdiction to sit over the opinion of the Medical Board cannot be conceded to it. It is only in exceptional cases and as may be provided in Army instructions, the PCDA (P) may refer the matter back to the competent authority for placing it before the appellate Medical Board for reconsideration. This issue was examined by the Supreme Court in the case of **Ex Sapper Mohinder Singh v. Union of India and another** [Civil Appeal No.164 of 1993 decided on 14.01.1993, wherein it was held thus:

> "From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is a very narrow compass viz, whether the Chief Controller of Defense 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 no where stated that the petitioner was subjected to any higher medical board before the Chief Controller of defense Accounts (Pension) decided to decline the disability pension to the petitioner. 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 and comment upon the extent of disability 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 Corp."

10. Similar question was considered by the Punjab and Haryana High Court in **Janak Raj v. Union of India and others, 2000 (1) RSJ 706**. What was held by the Punjab and Haryana High Court needs to be reproduced herein below:

> "The short question that falls for consideration of this Court in the present writ petition is whether the findings of the medical board could be altered to the prejudice of the petitioner by the CDA and could the CDA sit in judgment over the findings recorded by the medical board. This question is quite settled and does not call for any detailed discussion on the subject. It is a settled principle of law that the C.D.A. is not an expert body in regard to the determination of extent of medical disability or its attributability or aggravation to the military service....."

11. It is, thus, no longer *res integra* that the administrative decision taken by the PCDA(P), Allahabad denying the disability element of pension to the respondent runs counter to the legal position enunciated by various High Court and the Supreme Court in Ex-Sapper Mohinder Singh (supra). We are, therefore, in agreement with the Tribunal that the PCDA(P), Allahabad could not have sat over the opinion of the RSMB held on 6th September, 1996 in which the disability of the respondent was assessed @ 20% for ten years. The decision of the PCDA (P), Allahabad reducing the disability of 20%, assessed by the RSMB, to 11-14% arbitrarily and that, too, for five years was, thus, not tenable in law. The convening of second RSMB on 04.06.2002 for assessing the disability of the respondent was totally uncalled for and, therefore, has been rightly ignored by the Tribunal. Going by the medical opinion of the doctors constituting RSMB held on 06.09.1996,

the respondent is treated to have suffered disability @ 20% for ten years and, therefore, entitled to disability element of pension for all these ten years. The petitioners are, however, at liberty to bring the respondent to the Re-Survey Medical Board again for assessing his disability post 06.09.2006.

12. The plea of Mr. Jamwal that rounding off should not have been permitted in favour of the respondent, who was not invalidated out of service because of disability but retired on attaining normal superannuation, too, has been set at rest by the Supreme Court and different High Courts. The rounding off is applicable even to the cases where the army personnel retires on normal superannuation with a disability incurred by him during the course of his service provided such disability is either attributable or aggravated by military service. This view has been reaffirmed by the Supreme Court in the case of **Union of India and others v. Ram Avtar** [Civil Appeal No.418/2012 decided on 10.12.2014].

12. For all these reasons, we find no illegality or infirmity in the judgment passed by the Tribunal. The writ petition is, therefore, found devoid of any merit, the same is, accordingly, dismissed.

(Sanjay Parihar)
Judge

(**Sanjeev Kumar)**
Judge

JAMMU
19.08.2025
Vinod,PS

Whether the order is speaking : Yes
Whether the order is reportable: Yes