

ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI

CORUM

HON'BLE MR. JUSTICE SAILENDRA SHUKLA, MEMBER(J)
LT. GEN.P. GOPALAKRISHNA MENON, MEMBER(A)

O.A. NO. 14 OF 2023

DS 11994M Lt.Col.T.Moaba Amer (Retd)
H.No.481, Lengrijan, Dimapur,
Nagaland, Pin-797112.

By legal practitioners for Applicant
Mr AR Tahbildar

-Versus-

1. The Union of India,
Represented by the Secretary,
Ministry of Defence, Sena Bhawan,
New Delhi-1.
2. Additional Directorate General,
Personnel Services, PS-4(d).
Adjutant General's Branch,
IHQ of MOD(Army), DHQ,
P.O.- New Delhi.
3. IHQ pf MOD (ARMY),
Adjutant General's Branch,
DGMS (Army), MPRS(O),
'L' Block, New Delhi.
3. Principal Controller of Defence
Accounts (Pension), Allahabad,
Pin -211014, Uttar Pradesh

.... Respondents.

By legal practitioner for Respondents.
Mr. PJ Barman, CGSC

Date of hearing and order : 03.10.2024

ORDER

BY MEMBER(J)

The applicant has filed the present OA under Section 14 of the Armed Forces Tribunal Act,2007, seeking refund of recovered amount of Rs.12,78,220/- with accrued interest.

2. The factual matrix of the case, succinctly speaking is that the applicant was commissioned in Army Defence Corps on 4.3.1999 and was discharged from service on 3.3.2013 on completion of

terms of engagement. He was diagnosed Low Medical Category T-II of the disease of '*Atrial Fibrillation*' which, as per opinion of the Release Medical Board was aggravated by military service as the degree of disability 20% for life. He was however not granted any disability element of pension and was compelled to file OA No.1/2008 for the same. The aforesaid OA was allowed and the applicant was held entitled to degree of disability element of pension with rounding off benefit from 20% to 50% with arrears with effect from the date of discharge from service i.e., from 3.3.2013, within a period of 3 months from the date of receipt of the copy of the order.

3. In compliance of the Tribunal order dated 13.7.2008, payment of disability element was made to him, but arrears were limited w.e.f. 2.1.2015 with interest @ 8%, P-Annexure. Thus, though vide order dated 13.7.2018 disability element with interest was granted with effect from 3.3.2013, but the authorities in the aforesaid order restricted the arrears with effect from 2.1.2015. Against this, representation before PCDA, Allahabad was made, which, vide letter dated 4.11.2020 requested the respondent No.2 to examine the case and issue necessary direction in terms of Hon'ble AFT's aforesaid order. The respondents were again issued reminder letter by PCDA, Allahabad which was then replied by respondents that in view of restriction of arrears of 3 years, arrears were granted from 2.1.2015 and not from 3.3.2013. The respondents had in fact paid the arrears from the year 2013 and therefore, they illegally started deducting of Rs. 55,000/- with effect from December, 2021 onwards. It is this recovery, which is under challenge.

4. In reply, learned counsel for the respondents has submitted that disability of '*Atrial Fibrillation*' had been conceded as NANA and the same was intimated to the applicant vide letter dated 6.5.2014 (Annexure R-7). He was advised to prefer an appeal before Committee of First Appeals, which was rejected on the ground that the applicant was posted at peace station before onset and continued to serve in peace after onset. Second appeal was also dismissed for the same reasons. Still order pronounced in OA No. 1/2018 was executed. However, limiting the arrears to 3 years prior to the date of filing of OA, as per the clear principles in this regard enunciated by the Apex Court.

5. We have heard both the learned counsel and have perused the documents placed on record. The main question for determination is whether respondents were entitled to limit the arrears of disability pension to period of 3 years prior to filing of OA and whether they were entitled to recover the quantum of disability pension disbursed to the applicant prior to 2.1.2015.

6. It would be appropriate to reproduce para 6 and 7 of the order passed in OA No. 1/2018 which are as under :-

- “6. The opinion of the Medical Board Proceedings in Part-V is reproduced below :-

Part-V

OPINION OF THE MEDICAL BOARD

Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not connected with service (Y/N)	Reason/cause/specific conditions and period in service.
(a) Atrial Fibrillation	NO	YES	NO	Due to physical & mental stress and strain of service. (Para 28, Chapter VI of GMO's Mil Divn)

7. Also para 6 of page 5 of the Medical Board Proceedings is reproduced below-

“6. What is the 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 multiple of ten from 20% to 100%”

Disability (As numbered in question 1 Part IV)	Percentage of disablement with duration	Composite assessment for all disabilities (Max 100%) with duration	Disability qualifying disability person with duration	Net assessment Qualifying for Disability Pension (Max 100%) with duration
(s) Atrial Fibrillation	20% for life	20% for life	Yes for life	20% for life

7. The reason for not limiting the arrears to 3 years is not apparent as the respondents have declined disability pension despite the opinion of the Medical Board proceeding that disability was aggravated by military service due to physical and mental strain and stress of service. The opinion is recorded in paragraphs 6 and 7 of the final order passed in OA No.1/2018 which is placed at Annexure-R-10. Thus, there is no reason to limit disability pension to 3 years despite explicit opinion in favour of disability pension by the Medical Board. It is, for this reason, that the arrears

have not been limited to 3 years and thus there is no propriety for recovery of the amount paid from 2013 to 2015 to the applicant. The act of respondents to recover amount of pension paid between 2013 and 2015 can also not be sustained.

8. Hon'ble Supreme Court in the case of *State of Punjab Vs. Rafiq Masih (White Washer)* passed in Civil Appeal No.11527/2014 dated 18.12.2014 had issued guidelines against recovery from employees, paragraph 12 of which is being reproduced as under :-

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) *"Recovery from employees belonging to Class-III and Class -IV service (or Group 'C' and Group 'D' service.*
- (ii) *Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) *Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) *In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

9. Consequently, OA succeeds and recovery of Rs.12,78,220/- is held to be arbitrary and illegal and the same deserves to be refunded to the applicant.

10. The applicant shall be refunded the aforesaid amount of Rs.12,78,220/- within a period of four (04) months from the date of receipt of the copy of the order and breach thereof would invite interest @ 8% per annum.

11. No order as to costs.

(Lt. Gen. P. Gopalakrishna Menon), Member (A)

(Justice Shailendra Shukla), Member (J)