

**(2004) 02 KL CK 0030**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 23966 of 1998**

Thankachan

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

**Date of Decision :** 10-02-2004

**Acts Referred:**

Entitlement for Casualty, Pension any Award for Armed Forces Personals Rules, 1982  
— Rule 17, 27

**Citation :** (2004) 3 ILR (Ker) 147 : (2004) 1 KLT 967

**Hon'ble Judges :** Kurian Joseph, J

**Bench :** Single Bench

**Advocate :** T.S. Harikumar, for the Appellant; D. Somasundaram, for the Respondent

## Judgement

Kurian Joseph, J.—Petitioner is aggrieved by the discontinuance of disability pension. Petitioner was enrolled in the Army on 5.2.1962 as a Recruit. Suffering from Central Choroiditis (both eyes) and Duodenal Ulcer petitioner was discharged from the service on 31.3.1986. Respondents have a case that the petitioner had already reached the normal term of retirement. However, the fact that he had the disability at the time of discharge is not disputed. It is seen from the counter affidavit that the petitioner had been undergoing treatment since June, 1983 when he was placed under the Medical Category BEE (Temporary). After two periods of such temporary placement, he was placed under Medical Category BEE (Permanent) with effect from 28.12.1984 as per Ext.R4(c). Thereafter he developed Duodenal Ulcer since November, 1985. It is stated in the counter affidavit that the Release Medical Board had assessed 60% composite disability at the time of discharge as per Ext.R4(d). The Chief Controller of Defence Accounts (Pensions) Allahabad, however, accepted the disability at 20% and the petitioner was being paid the disability element of pension for 20% with effect from 1.3.1986 to 21.1.1991 as per Ext.R4(e). Thereafter the amounts were revised as per Ext.R4(f). On expiry of the period of five years, the petitioner was examined by the Resurvey Medical Board at INHS Aswini on

20.12.1990. On the basis of the report, the disability element of pension continued from 22.1.1991 to 19.12.1995 as per Ext.R4(h). The petitioner was again brought before the Resurvey Medical Board at INHS Sanjivani on 29.12.1995. It is admitted in the counter affidavit that "the percentage of disability was re-assessed at 60% by the Re-Survey Medical Board". The relevant proceedings have been produced as Ext.R4(i). However the award of disability pension was discontinued by the Chief Controller of Defence Accounts (Pensions) Allahabad, who rated the disability to be less than 20% for a period of ten years from 29.12.1995. The decision was communicated as per Ext.P2. Petitioner took up the matter in appeal as per Ext.P3 before the Government of India but the Appellate Authority rejected the appeal. However, it is stated in Ext.P4 that the Appellate Medical Authority assessed the disablement at less than 20% for five years.

2. The contention of the respondents is that merely because the Medical Board assessed the disability of the petitioner at 60%, petitioner will not be automatically entitled to get the pension. Placing reliance on Ext.R4(m) Rules - Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982 (hereinafter referred to as the Rules), it is submitted that the recommendations of the Medical Board can be reviewed by the Medical Advisers of Pensions attached to the office of the Chief Controller of Defence Accounts (Pensions), Allahabad. The reason is that "since the Medical Boards functioning at various Military Hospitals cannot be expected to be uniform in their assessment of disability and deciding attributability/aggravation factors, Medical Advisers of Pensions/Joint Director Armed Forces Medical Services, who are specialists ensure uniform application of Entitlement Rules".

3. The question is once the duly constituted Medical Board makes an assessment of the disability of a patient after examining the patient, is any other authority justified in making a re-assessment and that too bringing the disability below the eligible limits, without examining the patient? Is such a review permissible at subsequent assessments also? If so, what is the procedure thereof. Appendix D to Ext.R4(m) gives the latest version of the concerned Rules 17 and 27. Rule 17(b) and (c) are relevant. They read as follows:-

"17(b). At the time of invalidment/release of a service personnel medical views on attributability/aggravation and degree of disability shall be given by the Invaliding Medical Board (IMB)/Release Medical Board (RMB). The findings of the IMB/RMB/RSMB which are recommendatory in nature, shall be reviewed by the Competent Medical Authority at the time of consideration of Initial claim/Appeal for grant of disability pension. The Competent Medical Authority may for reasons to be recorded in writing, alter or modify the recommendations of IMB/RMB/RSMB/Lower Medical Authorities.

(c) The Competent Medical Authorities after review of the IMB/RMB/RSMB proceedings/findings of the Lower Medical Authorities, study of related medical/service documents, the clinical profile recorded and keeping in mind the aetiology

and nature of disease, shall evaluate the role played by service factors in the onset/progress of the disability. The recommendations of the Competent Medical Authority as accepted by the Pension Sanctioning Authorities i.e. Chief CDA (Pension)/Ministry of Defence shall be final with regard to the entitlement and assessment of disability for the purpose of grant of disability pension."

Rule 27(c) reads as follows:-

"Medical Authority.- Assessment of disablement and acceptance of attributability/aggravation in cases of disabilities other than injuries are medical issues. Views on such medical issues shall be given by the Competent Medical Authorities defined under Rule 17".

The clear indication in the Rules is that the finding and recommendation of the Medical Board are not statutory. The Competent Medical Authority is empowered to alter or modify the recommendations for reasons to be recorded in writing. The intention behind such a restriction imposed on the powers of the Competent Medical Authority is that while the Medical Board takes a decision on examining the patient, the reviewing authority makes the assessment only on the basis of the records. Therefore, while taking a different approach on the very same disability, unless reasons are stated, there is room for arbitrariness. May be two views are possible. But there should be reasons for the different view.

4. Rules permit such review only at the initial level of claim/appeal. Once disability pension is sanctioned by the Competent Authority on the advice of the Medical Authority, there is no question of review by the authority of the assessment by the Medical Board on continuing disability. In the matter of continuance of the disability pension, the pension sanctioning authority has to follow the assessment by the Competent Medical Board.

5. There is no case for the respondents that in the case of the petitioner the Competent Medical Board has not made a proper assessment. The fact remains that at the time of discharge he had disability. Though the assessment was for 60%, the same was accepted for the purpose of pension only as 20% and the petitioner had been in receipt of the same from. 1.4.1986. There was a review in 1990. Then also there was no change in the assessment. However, when the assessment is made in 1995, a different approach was taken limiting the disability to be between 13 to 19%, just below the eligible limit of 20%. Proceedings of the Resurvey Medical Board dated 29.12.1995 would give a clear indication as to the detailed examination conducted by the Board from 19.12.1995 to 23.12.1995. On the basis of such a close observation and examination only the Resurvey Medical Board gave a report of further assessment that the petitioner had a composite disability of 60%. Since the petitioner had accepted the view taken by the CCDA for limiting the pension to 20%, and the same was being continued from 1986 to 1995, there is no justification in taking a different view at this stage since there is no material change regarding the nature of the disability and the extent of disability from the

original, report, first review and the second review conducted in. 1995.

6. Therefore, the impugned orders are set aside, There will be a direction to the respondents to continue to grant the disability element of pension for 20% disability with effect from 29.12.1995. This shall be done within a period of three months from the date of production of a copy of the judgment.

The Original Petition is disposed of as above.