
(2013) 01 P&H CK 0226
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 6927 of 2011 (O and M)

15165 Flight Lieutenant Onkar Singh Bawa	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision : 25-01-2013

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 30

Citation : (2013) 169 PLR 830

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : Bhim Sen Sehgal, for the Appellant; Onkar Singh Batalvi, Senior Standing Counsel with Ms. Kamla Malik for UOI, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, C.J.—This writ petition is preferred against the order passed by the Armed Forces Tribunal, Chandigarh rejecting the case of the petitioner herein for disability element of pension. We are conscious of the fact that the statutory appeal against such an order is provided u/s 30 of the Armed Forces Tribunal Act, 2007 (for short "the Act"), however, having regard to the Constitution Bench judgment of the Supreme Court in the case of L. Chandra Kumar Vs. Union of India and others, and also that of Delhi High Court in CWP No. 13360 of 2009 titled as "Colonel A.D. Nargolkar v. Union of India and Ors." decided on 26.4.2011, following the aforesaid judgments in the context of this very act, we are deciding this petition on merits.

2. Accordingly, we have heard learned counsel for the parties on merits of the writ petition.

3. To recapitulate the fact, the petitioner, whose date of birth is 02.01.1934, was enrolled in Indian Air Force on 14.4.1953 i.e. at the age of 18 years and 9 months. He was commissioned in Air Force as Flight Lieutenant. He kept on getting further promotions as well. However, he was retired on 20.11.1986, after

rendering service of more than 33 years. During his service, in the year 1984, he was found suffering from IHD (Ischemic Heart Disease) and Cervical Spondylosis and on 14.3.1984 put in low medical category. Thereafter his case was referred to Release Medical Board and after examining his case he was boarded out of service on 20.11.1986. No doubt that was his normal date of retirement but he could seek extension which he did not because of the findings of the Release Medical Board.

4. The petitioner has been given normal pension as admissible to him, which is full pension as he has rendered more than 33 years of service. However, disability element of pension was denied and it is this element of pension which he claimed by filing O.A. before the Armed Forces Tribunal, Chandigarh, Regional Bench (for short "the Tribunal"). This O.A. is dismissed by the learned Tribunal vide its short order dated 14.1.2011 and the entire reasoning is contained in the following passage:-

Apart from the reply, the teamed counsel for the respondents has made today available for our perusal copy of the Medical Board proceedings (Release Medical Board), which has clearly opined the disability to be neither attributable nor aggravated. Even the other circumstances including expert opinion and the Commanding Officer's opinion, as appearing from these papers, also do not indicate any thing, which may even impel us to take a view contrary to the one taken by the Release Medical Board.

5. From the above, it is clear that the Tribunal went into the proceedings of the Release Medical Board and was persuaded by the opinion of the said Board to the effect that disability is neither attributable nor aggravated by the Air Forces Services. Further, neither any of the contentions addressed by the petitioner supported by the documents nor rules on the subject are taken note of or are discussed in impugned order. Opinion of the Released Medical Board or that of the Commanding Officer is taken as gospel truth and believing the same the O.A. is dismissed. This is not the function of the Tribunal which is meant to exercise judicial/quasi judicial functions and to consider as to whether the opinion of the Release Medical Board was in consonance with law or not. That is what is accepted by the Tribunal while undertaking the exercise of judicial review of the Administrative action. We are constrained to observe that the Tribunal has failed to discharge this function in the instant case.

6. The question which was to be considered by the Tribunal was as to whether heart disease which the petitioner acquired at the age of 52 years could be treated as attributable to or aggravated by the service rendered by him or it was a constitutional disease as contended by the respondents.

7. In the instant case, the petitioner had joined the duties at a young age when he was hardly 19 years old. He had rendered more than 31 years of service when in 1984 he was detected that he is suffering from IHD which is a heart disease. How such a disease could be constitutional disease. On the contrary, para 1 of

the regulations of the Indian Air Forces, 1961 provides a complete answer. Regulation 37 thereof deals with disability pension - when admissible provides as under:

37 (a) An officer who is retired from air force service on account of a disability which is attributable to or aggravated by such service and is assessed at 20 per cent or over may, on retirement, be awarded a disability pension consisting of a service element and a disability element in accordance with the regulations in this section.

(b) The question whether a disability is attributable to or aggravated by air force service shall be determined under the regulations in Appendix II.

8. As per sub Rule (b) of Rule 37 of the Regulations, the question as to whether a disability is attributable to or aggravated by Air Forces Service is mentioned in Appendix-II.

Appendix-II which contained classification of the deceased, inter alia, provides for certain diseases which may be affected by stress and strain. IHD is specifically mentioned under this head.

It is clear from the above that insofar as IHD is concerned, the respondents have themselves treated it to be attributable to stress and strain and this stress and strain is due to the duties which are discharged by the concerned officers. Therefore, the disease in question would be directly attributable to the service. The issue on this is no more res integra and has been determined by this Court in number of cases. It would suffice to refer to one such Division Bench judgment in the case of "Ex. Sepoy Bhola Ram v. Union of India" 2008 (4) SLR 377, wherein this very disease is clearly shown to be related to stress and strain referring to some provisions which we have taken note of above. As a result, impugned order of the Tribunal is hereby set aside. Consequently O.A. filed by the petitioner before the Armed Forces Tribunal is allowed. However, since the petitioner was boarded out of service in the year 1986 but he approached the Court only on 15.7.2010, insofar as arrears of disability element pension is concerned that would be admissible to him from the date of three years preceding the date of filing of the said O.A. The arrears should be calculated in accordance with judgment of the Supreme Court in the case of "K.J.S. Buttar Vs. Union of India (UOI) and Another, , and paid to the petitioner within a period of two months from the date of receipt of certified copy of this order.