
(2020) 02 AFT CK 0032

In the Armed Forces Tribunal

Case No : Original Application No. 1141 Of 2018

Aneesh Mehta

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 13-02-2020

Acts Referred:

Citation : (2020) 02 AFT CK 0032

Hon'ble Judges : Sunita Gupta, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : Ajay Yadav, Shyam Narayan

Final Decision : Disposed Of

Judgement

1. Arguments heard.

By separate order, OA stands disposed of.

The applicant, having been found medically and physically fit, was commissioned in the Indian Army on 24.12.1972. On superannuation, he was

discharged from service on 30.09.2006 in low Medical Category. In the year 1992, the applicant suffered from the disease Low backache and Lumbar

Spondylitis and downgraded to S1H1A3(T-24)P1E1, which was subjected to periodical review and was held as aggravated by military service due to

physical stress and strain of service by the medical board held on 27.08.1992. The recategorising medical board held on 27.06.2005 assessed the

disability () obesity @ 1-5% and (ii) Low backache with Lumbar Spondylitis @ 20% and composite disability as 20%. Release Medical Board

(RMB) assessed the applicant's disability ""(i) Obesity (01 to 5%) and low backache with Lumbar Spondylitis (20%) with composite degree of

disablement assessed @20% for life. However, the claim for disability pension

was rejected by the ADGPS by declaring the same to be 'neither attributable to nor aggravated by military service' (NANA) On 21.05.2018 the applicant preferred his appeal to the respondents for grant of disability pension. On 23.05.2018 the appeal of the applicant has been rejected by the respondents vide their letter dated 23.05.2018 on the ground that it is time barred because the applicant did not prefer the said appeal within six months of the initial rejection letter dated 28.09.2007, which the applicant did not receive.

2. It is submitted by the learned counsel for the applicant that once the release board assessed the applicant's disability as aggravated by military service, interference by administrative authorities is against the judgment of the Hon'ble Supreme Court given in the matter of Ex Sapper Mohinder Singh Vs. Union of India and Another! Civil Appeal No.164 of 1993 (arising out of SLP No. 4233 of 1992)] decided on 15.01.1993 and other rulings also.

3. Per contra, learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the Competent Authority found the disability "Neither Attributable to Nor Aggravated by Military Service".

4. Having heard learned counsel on both sides, we are of the view that the case in hand is squarely covered by the decision in Ex Sapper Mohinder

Singh (supra), wherein the Hon'ble Supreme Court observed as under:

XXX . . From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a

very narrow compass viz., whether the Chief Controller of Defence 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 nowhere stated that the petitioner was subjected to any higher Medical Board before the Chief Controller of

Defence 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 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 Corps.

5. Subsequent to this, the Integrated HQ of MoD (Army) issued letter dated 30.11.2016, which states, ""These alterations in the findings of 1MB/RMB

by MAP (PCDA(P) without having physically examined the individual, do not stand to the scrutiny of law and in numerous judgments, Hon'ble Supreme

Court has ruled that the Medical Board which has physically examined should be given due weightage, value and credence."" It further asks

Command Headquarters to instruct all Record Offices under their control to withdraw unconditionally from such cases, notwithstanding the stage

they may have reached and such files be processed for sanction"".

6. In light of the judgment of the Hon'ble Supreme Court in Ex Sapper Mohinder Singh (Supra), we are satisfied that the claim for disability pension

was wrongly interfered with by the Administrative Authority. As per the findings of Release Medical Board, the applicant's disability was held

aggravated by physical & mental stress and strain of military service and is, therefore, entitled for disability pension.

7. Consequently, the OA is allowed and the impugned order rejecting the claim of the applicant for disability pension is set aside. We hold that

applicant is entitled to disability element of pension from the date of his retirement, i.e., 01.10.2006 @20% for two years, which is to be broad-banded

to 50% for two years in light of the judgment of the Hon'ble Supreme Court in Union of India and Ors. Vs. Ram Avtar [Civil Appeal 418 of 2012]

decided on 10 th December, 2014. The respondents are further directed to refer the applicant's case to Review Medical Board for reassessing the

medical condition of the applicant for further entitlement of disability pension, if any within a period of four months from the date of receipt of the

order.

8. Accordingly, the respondents are directed to release the arrears within a period of four months from the date of receipt of copy of this order, failing

which, the arrears shall carry interest at the rate of 6% per annum.

9. OA stands disposed of in the above terms with no order as to costs.