

(20) 06 AFT CK 0035

In the Armed Forces Tribunal

Case No : Original Application No. 518 Of 2019, Miscellaneous Application No. 1091 Of 2019

Chhatar Pal Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 17-06-20

Acts Referred:

Citation : (20) 06 AFT CK 0035

Hon'ble Judges : Sunita Gupta, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : S.M. Dalal, Arvind Pate

Final Decision : Disposed Of

Judgement

M.A. 1091 OF 2019

1. For the reasons carved out in the application, the delay of 7665 days in filing the Original Application is condoned. MA stands disposed of.

O.A. 518 OF 2019

The applicant, Ex. Hay. Chhatar Pal Singh, through the medium of the instant Original Application is seeking the following reliefs:

(a) Quash PCDA (P) order dated 28.11.1997 being arbitrary and perverse.

(b) Direct the respondents to pay disability pension to the applicant w.e.f. 01 Dec 1996 @30% for life with further direction to broad band it to 50%.

(c) Direct the respondents to pay interest @12% p a over the arrears we f 01 Dec 1996.

(d) Pass any other or further order(s) which this Hon'ble Tribunal considers appropriate in the facts and circumstances of the case.

2. Briefly stated facts of the case are that the applicant was enrolled in Army

Medical Corps in Indian Army on 14.12.1973 and was discharged on 30.11.1996 in Low Medical Category on completion of terms of engagement. At the time of retirement from service, the Release Medical Board (RMB) held at Command Hospital (Northern Command) 08.11.1996 assessed his disabilities (i) 'PRIMARY HYPERTENSION' @ 30% for two years and (ii) 'OBESITY (401, 278)' @11-14% for two years, composite @30% for two years but opined the first disability to be aggravated by military service due to stress and strain of military service and second disability to be neither attributable to nor aggravated (NANA) by military service. The initial claim for grant of disability element was rejected by the PCDA (P), Allahabad vide their letter dated 28.11.1997. The applicant's Appeal dated 06.01.1998 was rejected by the respondents vide their letter dated 15.02.2000. The applicant preferred another Appeals dated 09.05.2018 and 13.11.2018 which were replied by the respondents vide their letters dated 26.05.2018 and 10.12.2018 respectively informing the rejection of the Appeals. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The diseases of the applicant were contracted during the service, hence it is attributable to and aggravated by Military Service. The act of overruling the recommendations of RMB by higher competent authority of PCDA (P) was wrong and should be set aside. He further submitted that in similar cases, Honible Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension @30% and its rounding off to 50%,

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. 'PRIMARY HYPERTENSION' has been regarded as 30% for two years by RMB as aggravated by military service. However, PCDA (P) has rejected the claim of the applicant on the ground that both the disabilities were neither attributable to nor aggravated by military service, constitutional in nature and not related to service. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB proceedings. We are of the opinion that medical board which has examined the applicant is best placed to decide an attributability or aggravation. Hence, the only question which needs to be answered is whether the PCDA (Pensions), Allahabad has power to overrule the opinion of the RMB without conducting another Medical Board?

6. This is a case where the RMB had conceded the disease i.e. 'PRIMARY HYPERTENSION' @30% for two years of the applicant as aggravated by Military Service. However, PCDA (P) has rejected the claim of the applicant on the ground. However, it is clear that the higher competent authority i.e. PCDA (Pensions) has not physically examined the applicant. The Hon`ble Apex Court has made it very clear that the opinion of the Medical Board cannot be overruled by higher chain of command without physical medical examination of the patient by a higher Medical Board. In this context the operative portion of the judgment of Hon'ble Apex Court in the case of Ex. Sapper Mohinder Singh vs. Union of India in Civil Appeal No 104 of 1993 decided on 14.01.1993 is quoted below:-

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 Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. 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 Core.

7. Thus we set aside the decision of PCDA (Pensions) for rejecting the claim of the applicant for grant of disability element and are of the considered opinion that the applicant was entitled to disability element for disease i.e. 'PRIMARY HYPERTENSION' @30% for two years from the date of his

discharge i.e. 30.11.1996 in accordance with the original opinion of RMB.

8. The first disability 'PRIMARY HYPERTENSION' has been recommended by the Medical Board, in its wisdom, for two years only. Therefore, as

per Ministry of Defence letter No. 1(2)/97/D (Pen-C) dated 31.01.2001, para 10, a fresh RSMB for life will have to be conducted by the respondents.

In this connection we are of the opinion that a Medical Board is the best agency to take a call on the duration after which the disease needs review.

Additionally, the opinion of Medical Board and the percentages of disability in the Medical Board have direct correlation with financial benefits

accruing out of a disability, hence, it is important that Medical Board reaches a final opinion. The respect for expertise of a Medical Board has been

clarified by Hon'ble Supreme Court in its judgment dated 03.10.2019 in Civil Appeal No 7672 of 2019 in Ex Cfn Narsingh Yadav vs Union of India &

Ors. Decided on 03.10.2019. Relevant part of the aforesaid judgment is as given below:-

21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such

report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of

the Review Medical Board.

9. In view of the above, the Original Application No. 518 of 2019 deserves to be partly allowed, hence, partly allowed. The impugned order dated

28.11.1997, enclosed at Annexure A-1 of the Original Application, is set aside. The disability of the applicant 'PRIMARY HYPERTENSION' is to be

considered as aggravated by military service. Since, the applicant's RMB was valid for only two years w.e.f. 30.11.1996 and the applicant has

approached this Tribunal after a huge delay, hence, in view of decision of the Hon'ble Supreme Court in Union of India Vs, Tarsem Singh, reported in

2009 (1) AISLJ 371 with regard to law of limitation the applicant is not entitled for the arrears of disability element for these two years period after

discharge. His future entitlement to disability element is subject to the outcome of this RSMB. The respondents are directed to conduct a Re-Survey

Medical Board for the applicant to assess his further entitlement of disability element in terms of Para 10 of Government Letter dated 07.02.2001 on

conduct of Medical Board. Respondents are directed to give effect to the order

within four months from the date of receipt of a certified copy of this order.

10. No order as to costs.

11. Pending application(s), if any, also stand disposed of.

Pronounced in the open court on 17th June 2020.