

(20) 06 AFT CK 0031

In the Armed Forces Tribunal

Case No : Original Application No. 998 Of 2017

H Anjanappa

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 17-06-20

Acts Referred:

Citation : (20) 06 AFT CK 0031

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

Bench : Division Bench

Advocate : Manoj Kumar Gupta, S.D. Windlesh

Final Decision : Disposed Of

Judgement

1. The applicant, Major H. Anjanappa (Retd.), through the medium of the instant Original Application is seeking the following reliefs: (i) Petitioner,

hence, prays for grant of disability pension in accordance with the applicable Rules and as held by the Hon'ble Supreme Court vide Annexure A-1 to

A-5 and The Entitlement Rules, 1982, by setting aside that part of the Medical Board (Impugned Order 1) and the consequent rejection (Impugned

Order 2) wherein his disability has been opined to be neither attributable to nor aggravated by military service being not only in conflict with the Rules

but also in direct contravention of a series of decisions of the Hon'ble Supreme Court (as seen supra);

(ii) With a further prayer that the Hon'ble Tribunal may be pleased to direct that the Disability Pension thus awarded may be broad banded by the

Respondents in terms of the Judgment of the Hon'ble Supreme Court of India in C.A. 418/2012 in Ram Avatar Vs Union of India;

(iii) That the Respondents may be directed to release the broad banded disability

pension and its arrears with heavy costs and compensation and interest within a time-bound manner,.

(iv) Any other relief, which the Hon'ble Tribunal may deem fit in the interest of Petitioner.

2. Briefly stated facts of the case are that the applicant was enrolled in Indian Army in November, 1967 as Junior Commissioned Officer. The

applicant was commissioned in Army on 22.07.1982 and was discharged on 28.02.2001 in Low Medical Category after attaining the age of

superannuation. At the time of retirement from service, the Release Medical Board (RMB) held at Command Hospital (Eastern Command), Calcutta

on 28.09.2000 assessed his disabilities (i) 'NIDDM' 250' @20% for two years, and (ii) 'IHD' (411)' @20% for two years, composite @40% for two

years. The RMB opined the first disability i.e. 'NIDDM (250)' to be aggravated by military service and second disability i.e. 'IHD (411)' to be neither

attributable to nor aggravated (NANA) by military service. The initial claim of disability was rejected by the Army Headquarters on 16.05.2001. The

applicant has preferred petition dated 05.09.2016 which was again rejected by the Army Headquarters stating that both the diseases of the applicant

were considered as NANA. 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/commission, 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/commission 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 was wrong and should be set aside. He further submitted that in similar cases,

Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability

pension @20% and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that first disability of the applicant i.e. (i) 'NIDDM' 250' has been regarded as

20% for two years by RMB as aggravated by military service and the second disability i.e. 'IHD' (411) has been regarded as 20% for two years by

RMB as NANA. However, Army Headquarters has rejected the claim of the applicant on the ground that since both the disabilities of the applicant

were neither attributable to nor aggravated by military service being of constitutional in nature. 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. The

question which needs to be answered is straight and simple i.e. whether the Army Headquarters 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 first disease i.e. 'NIDDM (250)' of the applicant as aggravated by Military Service, however,

second disease of the applicant i.e. 'IHD (411)' was opined by the RMB as NANA. The Army Headquarters has overruled the opinion of the RMB

and declared that both the disabilities of the applicant are NANA. However, the law on overruling the opinion of a Medical Board is no more RES

INTEGRA. The law on this issue has been settled by Hon'ble Court. 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. In view of above we set aside the decision of Army Headquarters for rejecting the claim of the applicant for grant of disability pension and are of

the considered opinion that the applicant was entitled to disability pension for first disease i.e. NIDDM (250)' @20% for two years from the date of

discharge. Additionally, after considering all aspects of the second disease, we agree with the opinion of RMB in respect of the second disease i.e.

'IHD -411', declaring it as NANA.

8. Since the applicant's RMB was valid for two years w.e.f. 28.02.2001, however, the disease being of a permanent nature, it is to be deemed as an

RMB for life in light of Hon'ble Supreme Court Judgment in Civil Appeal No.(s) 5970 of 2019 Commander Rakesh Pande Versus Union of India,

decided on 28.11.2019.

9. In view of the above, the Original Application No. 998 of 2017 deserves to be partly allowed, hence, partly allowed. The impugned orders dated

11.05.2001 and 21.09.2016, enclosed at page 34 and 35 of the Original Application, are set aside. The first disability of the applicant INIDDM @

250' is to be considered as aggravated by military service for life. Applicant is granted disability element of pension @20% for life which be broad

banded to @50% for life in the light of decision of Hon'ble Supreme Court in Union of India and Ors Vs Ram Avtar & ors (Civil appeal No 418 of

2012 decided on 10th December 2014) case. However, 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 entitled for the arrears of disability element only upto three years

before the date of filing this Original Application. The date of filing of this Original Application is 26.05.2017. Respondents are directed to give effect

to the order within four months from the date of receipt of copy of this order, failing which it shall attract interest @6% per annum till the date of

payment.

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.