
(20) 06 AFT CK 0041

In the Armed Forces Tribunal

Case No : Original Application No. 637 Of 2019, Miscellaneous Application No. 1219 Of 2019

K.P. Sinha

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 17-06-20

Acts Referred:

Citation : (20) 06 AFT CK 0041

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

Bench : Division Bench

Advocate : S.C. Jaidwal, V.S. Tomar

Final Decision : Disposed Of

Judgement

MA 1219 of 2019

1. For the reasons carved out in the application, the delay of 84 days in filing of Original Application is condoned. MINIM. MA 1219 of 2019 stands disposed off.

OA 637 of 2019

The applicant, Maj. Gen. K.P. Sinha (Retd.), through the medium of the instant Original Application is seeking the following reliefs:

(a) Direct the Respondents to treat the first disability of the Applicant, namely, ""IF/D"" also as aggravated by stress and strain of military service, since

the same was assessed 'as aggravated by military sen.iice' by the Release Medical Board held at the time of retirement of the Applicant from service;

(b) Direct the Respondents to grant disability element of pension to the Applicant Â©50% for life w.e.f. 01.06.20017, as the composite assessment of

the Applicant's both disabilities was assessed by the RMB Â©50% for life;

(c) Direct the Respondents to pay enhanced disability element of pension to the Applicant @75% for life w.e.f. 01.06.2007 by rounding off/broad-

banding Applicant's disabilities from composite 50% to 75% as per Govt. Policy dated 31.01.2001.

(d) Direct the Respondents to pay interest @10% p.a. to Applicant on the arrears of disability pension w.e.f. 01.06.2007 and/or

(e) Issue such other order(s)/direction(s) as may be deemed appropriate in the facts and circumstances of the case.

2. Brief facts of the case are that the applicant was initially commissioned in Indian Army on 23.06.1968 (SSC), subsequently granted Permanent

Commission on 23.06.1973 and retired on 31.05.2007 in Low Medical Category on attaining the age of superannuation. At the time of retirement from

service, the Release Medical Board (RMB) held at New Delhi on 20.12.2006 assessed his disabilities (i) ISCHAEMIC HEART DISEASE (IHD)'

@50% for life and (ii) 'CHRONIC SUPPURATIVE OTTITS MEDIA (L)' @ 15-19% for life, composite @50% for life, and opined the first

disability to be aggravated by military service and the second disability to be attributable to military service. The opinion of RMB on attributability

/aggravation, was over ruled by the competent authority, and both disabilities were declared NANA vide their letter dated 27.11.2007. Thereafter the

applicant preferred first appeal dated 24.08.2017. Based on this 26.03.2018. The appeal, the respondents have conducted a First Appeal Medical

Board (1st AMB) of the applicant at Base Hospital, Delhi Cantt. On 1st AMB partly agreed with the opinion of competent authority and declared his

first his disability i.e, ISCHAEMIC HEART DISEASE (IHD)' @50% as NANA. However differing with the earlier opinion of competent authority,

the 1st AMB declared the second disability i.e. (ii) 'CHRONIC SUPPURATIVE OTTITS MEDIA (L)' @ 20% for life, as attributable to military

service. Accordingly, the applicant was granted disability element of disability pension @20% for life from 24.08.2017. The applicant was also

granted the benefit of broad banding from 20% to 50% for life from 24.08.2017. It is in this perspective that the applicant has preferred the present

O.A. praying for disability pension for first disability also.

3. Learned Counsel for the applicant pleaded that at the time of 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 both the diseases are attributable to and aggravated by Military Service. Although

the RMB has opined that first disease i.e. IHD'as aggravated by military service and second disease i.e. 'CHRONIC SUPPURATIVE OTTITS

MEDIA (L)as attributable to military service but the Army Headquarters has rejected the initial claim of the applicant for grant of disability element

stating that both the disabilities are NANA. The act of overruling/not granting the recommendations of RMB by higher competent authority was

wrong and should be set aside. However, later on respondents .i. have conducted 1st AMB of the applicant at Base Hospital, Delhi Cantt. on

26.03.2018. The 1st AMB assessed his disabilities (i) 'IHD' @50% as NANA and (ii) 'CHRONIC SUPPURATIVE OTTITS MEDIA (L) '@ 20%

for life as attributable to military service, Remarks @20% for life. Accordingly, the applicant was granted disability element of disability pension

@20% for life from 24.08.2017. The applicant was also granted the benefit of broad banding of disability element @50% (20% rounding off) for

life from 24.08.2017.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 for both his disabilities @50% and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that the first disability of the applicant i.e. 'IHD' has been regarded as 50% for life

by RMB as aggravated by military service and the second disability i.e. 'CHRONIC SUPPURATIVE OTTITS MEDIA (L) has been regarded as

15-19% for life by RMB as attributable to by military service. However, competent authority had over ruled the opinion of RMB and declared both the

disease as NANA. Subsequently based on applicant's first delayed appeal, after nine years, the Competent authority carried out First Appeal Medical

Board (AMB).The 1st AMB assessed his disabilities and has conceded only his second disability i.e. 'CHRONIC SUPPURATIVE OTTITS MEDIA

(L)' @ 20% for life as attributable to military service. Accordingly, the applicant was granted disability element of disability pension @20% for life.

The applicant was also granted the benefit of broad banding of disability element from 20% to @50% for life from 24.08.2017. He submitted that

with the conduct of AMB, the competent authority has got the applicant physically examined by a higher medical board, hence the opinion of higher medical board i.e. AMB is final and the applicant is already receiving disability pension in accordance with the opinion of the Appeal Medical Board (AMB). 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 as well as ist AMB proceedings. This is an interesting case where the competent authority has initially overruled the opinion of RMB. However, subsequently a higher medical board i.e, AMB after physical examination of applicant, has partly overruled the opinion of the competent authority for one of the diseases resulting in grant of disability pension to the applicant. In this back drop the only question which needs to be answered by us is whether the applicant is eligible for disability pension for both his disabilities?

6. The law on overruling the opinion of a Medical Board is no more RES INTEGRA. The Hon'ble Apex Court has made it very clear that the opinion sol the Medical Board cannot be overruled by higher competent authority 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 settled law, the following facts are clear to us:

(a) That competent authority overruled the opinion of RMB on attributability/aggravation, of both the disabilities of applicant.

(b) That the applicant appealed against the decision of competent authority in rejecting his claim for disability pension. The applicant's appeal was a

belated appeal i.e. after a delay of nine years. However the competent authority accepted this belated appeal and the applicant was physically

examined by a higher medical board i.e. an Appeal Medical Board.

8. Thus in view of the above factual position, it is clear to us that the applicant is selectively accepting one half of the Appeal Medical Board findings

which are to his advantage and challenging the other half of findings which are to his disadvantage. However considering all issues, we are of the

opinion that this is a case where over and above the opinion of competent authority, a higher medical board i.e. an Appeal Medical Board (AMB) had

been constituted to examine the applicant, therefore the opinion and recommendations of AMB are final. Since the opinion of AMB has already been

implemented resulting in grant of disability pension to the applicant, hence we are of the considered opinion, that the respondents have been more than

fair to the applicant and this case doesn't merit any interference from this tribunal.

9. In view of the above, the Original Application No. 637 of 2019 deserves to be dismissed as devoid of merit, hence, it is dismissed.

10. No order as to costs.

11. Pending application, if any, also stand disposed of.

Pronounced in the open court on 17th June 2020.