
(2019) 09 AFT CK 0011

In the Armed Forces Tribunal

Case No : Original Application No. 2058 Of 2017

Krishna Bahadur Chand

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 16-09-2019

Acts Referred:

Army Rules, 1954 — Rule 13(3)

Citation : (2019) 09 AFT CK 0011

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

Bench : Division Bench

Advocate : Pallavi Awasthi, Arvind Patel

Final Decision : Disposed Of

Judgement

1. Arguments heard

Vide separate order. OA stands disposed of.

Having been found medically and physically fit the applicant. was enrolled in Indian Army on 27.12.1994. After completion of nine months of hard

training, while being posted at GRC Jabalpur on 24.09.1995, the applicant all of sudden became unconscious while running in BPET and subsequently

he was referred to Military Hospital. Jabalpur. After the treatment at Jabalpur, the applicant was subjected to invaliding Medical Board proceedings

and he was found to be suffering from the disease of GENERALISED TONIC CLONIC SEIZURE 345 which was assessed @ 30% for 02 years

as aggravated by military training/service. He was invalided out from Army service in low medical category EEE on 17.01.1996 (AN) under Rule

13(3) item III (iii) of Army Rules. 1954 after having rendered one year and 22 days of service.

2. Learned counsel for the applicant contended that the instant matter is squarely covered by a catena of decisions of the Hon'ble Supreme Court

including Dharanivir Singh Vs. Union of India and Ors. (2013) 7 SCC 31 6Union of India and Ors. Vs. Rajvir Singh (2015) 12 SCC 26.4 Union of

India and Ors Vs Angad Singh Titaria, (2015) 12 SCC 257 and Sukhwinder Singh versus Union of India & Ors. 2014 STPL(Web) 468. Further, the

claim of the applicant is also supported by relevant rules.

3. Per contra. learned counsel for the respondents submits that although the disability of the applicant was assessed by the invaliding Medical Board as

aggravated by military service with 30% disablement for 2 years. However. PCDA(P). Allahabad had rejected the claim of the applicant for disability

pension in consultation with the Medical Advisor (Pensions) at PCDA(P), Allahabad on the ground that the disability was neither attributable to nor

aggravated by military service and also constitutional in nature and not related to service. It is further submitted in the counter affidavit that although

the institution of MAP at PCDA(P) Allahabad has abolished since 2004. However, as per Rule 17(ii) of Entitlement Rules for Casualty Pensionary

Awards 1982. the old cases are not to be reopened.

4. Having heard learned counsel for both the sides, we are of the view that the only question for consideration in the instant case, where the disability,

which has been assessed by the invaliding Medical Board as aggravated by military service and assessment of the disability is also 30%, can the

PCDA interfere with the opinion of the invaliding Medical Board.

5. The matter is no longer res Integra as has been held by the Hon'ble Supreme Court in Ex. Sapper Mohinder Singh versus Union of India (CA

164/1993) decided on 14.01.1993.

6. In Ex Sapper Mohinder Singh (Supra) it was observed by the Hon'ble Supreme Court as under:

...x .. xxx...xx...xx...xx...xx... 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.

7 in the light of the preceding paragraphs and essential parameters given aforesaid, we hereby set aside the impugned order rejecting the claim of the applicant for disability pension and hold that he is entitled to disability pension from the date of his retirement at the rate of 30% for two years, which is to be broad banded to fifty per cent in the light of the judgment of the Honble Supreme Court in Union of India and Ors. Vs. Ram Avtar decided on 10th December, 2014.

8. The respondents are directed to release the arrears within a period of four months from the date of receipt of a copy of this order. failing which the arrears shall carry interest at the rate of eight per cent per annum.

9. Since the applicant has come to this Tribunal after considerable delay, hence the arrears of service element are restricted to three years prior to the date of filing of the application (i.e. 08.12.2017). Additionally, he shall not be entitled to any arrears on disability element. His future entitlement to disability element will be subject to the out come of RSMB which is to be held by respondents within 04 months of this order.

10. The O.A. stands disposed of in the above terms with no order as to costs.