(2020) 03 AFT CK 0039

In the Armed Forces Tribunal

Case No : Original Application No. 129 Of 2018

Mahendri Kumari APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 05-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0039

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

Bench : Division Bench

Advocate : V.S. Kadian, Barkha Babbar

Final Decision : Disposed Of

Judgement

1. The applicant, Lt. Col. Mahendri Kumari (Retd.), through the medium of the instant Original Application is seeking the following reliefs:

(a) Quash and set aside the impugned letter No. B/38046A/169/2017/AG/PS-4 (2nd Appeal) dated 09.11.2017 And/or

(b) Direct respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant her disability element of

pension with benefits of broad banding/rounding off the same. and/or

(c) Direct respondents to pay the due arrears of disability element of pension with interest Â©12% p.a. from the date of retirement with all the

consequential benefits.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

2. Briefly stated facts of the case are that the applicant was commissioned in Indian Army on 27.12.1985 and was retired on 31.08.2015 in Low

Medical Category on superannuation completion of terms of engagement. At the time of retirement from service, the Release Medical Board (RMB)

held at Military Hospital, Alwar on 10.05.2015 assessed her disabilities (i) PRIMARY HYPERTENSION ICD NO, I 10.0 Â©30% permanent for life

(ii) TYPEâ?"II DIABETES MELLITUS ICD NO. E 14 Â©20% permanent for life and (iii) OBESITY ICD NO. E 66 Â©1-5% for permanent for

life, composite 50% permanent for life but opined the first and second disabilities i.e. PRIMARY HYPERTENSION ICD NO. I 10.0 and TYPE â?

II DIABETES MELLITUS 1CD NO. E 14 to be aggravated by military service and for third disability i.e. OBESITY 1CD NO. E 66 to be neither

attributable to nor aggravated by military service. The applicant's claim for grant of disability element has been rejected by the res vide letter dated

29.02.2016. The first and second Appeals have also been rejected vide letters dated 19.12.2016 and 09.02.2017 respectively. 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 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 she was suffering from any disease at the time of commission in Army. The diseases

of the applicant were contacted during the service, and the first and second diseases have been opined by the RMB as aggravated by Military Service

as the said diseases have been reported a long and frequent spells of service in field area and due to stress and strains of 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,

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

element @40% and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that the first and second disabilities of the applicant i.e. PRIMARY

HYPERTENSION ICD NO. I 10.0 and TYPE â?" II DIABETES MELLITUS ICD NO. E 14 have been regarded as @30% and Â©20%

respectively, composite @40% permanent for life by RMB as aggravated by military service. However, Army Headquarters has rejected the claim of

the applicant on the grounds that the said disabilities were detected during routine medical examination in October 2011, while the applicant was posted at Ambala (Peace). 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 whether the Army Headquarters has power to overrule the opinion of the RMB for the disability?

6. This is a case where the RMB had conceded the first and second diseases i.e. PRIMARY HYPERTENSION ICD NO. I 10.0 and TYPE â?" II

DIABETES MELLITUS ICD NO. E 14 of the applicant as aggravated by Military Service. The Army Headquarters has rejected the claim of the

applicant for grant of disability element on the ground that the onset of the said diseases is at Ambala (Peace). However, it is clear that the higher

competent authority i.e. Army Headquarters 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. 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 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 disease i.e. PRIMARY HYPERTENSION ICD NO. I 10. 0 Â©30%

permanent for life and TYPE â?" II DIABETES MELLITUS ICD NO. E 14 Â©20% permanent for life, composite Â©40% permanent for life from

the date of discharge i.e. 01.09.2015.

8. In view of Hon'ble Supreme Court judgment in the case of Union of India and Ors Vs Ram Avtar & ors (Civil appeal No 418 of 2012 decided on

10th December 2014) the applicant is entitled for rounding of disability element from Â©40% to Â©50% for life.

9. In view of the above, the Original Application No. 129 of 2018 deserves to be allowed, hence, allowed. The impugned orders dated 29.02.2016,

19.12.2016 09.11.2017, enclosed as Annexures A-3, A-5 and A-1 of the Original Application, are set aside. The respondents are directed to grant

disability element to the applicant @40% for life which would stand rounded off to 50% for life with effect from the date of her discharge i.e.

01.09.2015. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this

order. Default will invite interest @ 6% per annum till actual payment.

10. No order as to costs.

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

Pronounced in the open court on 5th March, 2020.

