
(2019) 09 AFT CK 0044
In the Armed Forces Tribunal
Case No : Original Application No. 423 Of 2018

Rajesh Kapoor

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 16-09-2019

Acts Referred:

Citation : (2019) 09 AFT CK 0044

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

Bench : Division Bench

Advocate : M. K.Gupta, A.S.Puar, Barkha Babbar

Final Decision : Disposed Of

Judgement

1. Arguments heard.

Vide separate order, OA stands disposed of.

Having been found medically and physically fit, the applicant, who was commissioned in the Army Medical Corps on 10.10.1979, was superannuated from service on 30.09.2013 in low medical category CAD TVD LV disability of which was assessed at 30% for life, treating it aggravated by military service, by Release Medical Board yet denied by the competent authority on the ground that disability was neither attributable to nor aggravated by service.

2. Despite grant of sufficient number of opportunities, the respondents have not filed counter affidavit, as such vide order dated 08.04.2019. right of the respondents to file counter affidavit was closed.

3. 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 Dharamvir Singh Vs. Union of India and Ors. (2013) 7 SCC 31,6 Union of India and Ors Vs Rajvir Singh (2015) 12 SCC 26 4and Union of

India and Ors Vs. Angad Singh Titaria, (2015) 12 SCC 257. Further, the claim of the applicant is also supported by relevant rules.

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 competent authority interfere with the opinion of the invaliding Medical Board.

5. The matter is no longer res integre 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'bie 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 element of pension from the date of his retirement at the rate of 30% for life,

which is to be broad banded to fifty per cent in the light of the judgment of the Hon.ble Supreme Court in Union of India and Ors. Vs. Ram Avtar

decided on 16 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 are restricted to three years prior to the date of filing of the application (i.e. 02.02.2018).

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