
(2019) 10 AFT CK 0062

In the Armed Forces Tribunal

Case No : Original Application No. 07 Of 2019, Miscellaneous Application No. 312 Of 2019

R.K.S. Kathania

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 15-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0062

Hon'ble Judges : Sunita Gupta, J;Philip Campose, Member (A)

Bench : Division Bench

Advocate : J.P. Sharma, Neeraj

Final Decision : Disposed Of

Judgement

1. Counter affidavit has already been filed.

Learned counsel for the applicant submits that he does not want to file rejoinder.

Arguments heard.

Vide separate order, OA along with MA stands disposed of.

M.A. No. 312 of 2019:

Vide this application, the applicant seeks condonation of delay of 5388 days in filing the OA by relying upon Deokinandan Prasad Vs. State 471 Bihar

- [AIR 1971 SC 14091 and Union of India & Ors. Vs. Tarsem Singh -[2009 (1) AISIAI 371 1wherein it was held that since the pension is not a

bounty payable on the sweet-will and pleasure of the Government, on the other hand, the right to pension is a valuable right vesting in a government

servant, relief may be granted as it does not affect the rights of the other parties. However, in so far as consequential relief of recovery of arrears for

past period, the principles relating to recurring! successive wrongs will apply. As a result, consequential relief relating to arrears will be restricted to three years prior to the filing of writ petition.

In view of the aforesaid, delay of 5388 days in filing the OA is condoned and in the event of the applicant's succeeding in the OA, arrears will be restricted to three years, prior to filing of OA.

Accordingly, M.A. No. 312 of 2019 stands disposed of.

O.A. No. 07 of 2019 :

The applicant, having been found medically and physically fit, was enrolled in the Indian Army on 12.10.1963 and was commissioned as General

Service (RO) on 25.07.1983. On superannuation, he was discharged from service on 30.11.2002 in low Medical Category T2' (Permt). The Release

Medical Board (RMB) held on 30.06.2002 assessed the applicant's disability 'PRIMARY HYPERTENSION (401)' @ 30% for life and accepted the

same as 'aggravated by physical 86 mental stress and strain of military service. However, the claim for disability pension was rejected by the AG/PS-

4(d) for Adjutant General by declaring the same to be 'neither attributable to nor aggravated by military service' (NANA). However, the claim for

disability pension was rejected by the PCDA (P) Allahabad, by declaring it to be neither attributable to nor aggravated by military service. Hence, the

present Original Application.

2. It is submitted by the learned counsel for the applicant that this interference by administrative authorities is against the judgment of the Hon ble

Supreme Court given in the matter of Ex Sapper Mohinder Singh Vs. Union of India and Another [Civil Appeal No. 164 of 1993 (arising out of SLP

No. 4233 of 1992)] decided on 15.01.1993 and other rulings also.

3. Per contra, learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the Competent Authority

found the disability ""Neither Attributable to Nor Aggravated by Military Service"".

4. Having heard learned counsel on both sides, we are of the view that the case in hand is squarely covered by the decision in Ex Sapper Mohinder

Singh (supra), wherein the Honble Supreme Court observed as under:

â??â?|xxxâ?| 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.

5. Subsequent to this, the Integrated HQ of MoD(Army) issued letter dated 25.04.2011, which states, "These alterations in the findings of IMBI RMB

by MAP (PCDA(P) without having physically examined the individual, do not stand to the scrutiny of law and in numerous judgments, Hon'ble Supreme

Court has ruled that the Medical Board which has physically examined should be given due weightage, value and credence." It further asks

Command Headquarters to instruct all Record Offices under their control to withdraw unconditionally from such cases, notwithstanding the stage

they may have reached and such files be processed for sanction".

6. In light of the judgment of the Hon'ble Supreme Court in Ex Sapper Mohinder Singh (Supra), we are satisfied that the claim for disability pension

was wrongly interfered with by the Administrative Authority. As per the findings of Release Medical Board, the applicant's disability was held

aggravated by physical 85 mental stress and strain of military service and is, therefore, entitled for disability pension.

7. Consequently, the OA is allowed and 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 discharge rii). 30% for life, which is to be broad-banded to 50% in light of the judgment of the

Hon'ble Supreme Court in Union of India and Ors. Vs. Ram Avtar [Civil Appeal 418 of 2012] decided on 10th December, 2014.

8. Accordingly, the respondents are directed to release the arrears within a period of six months from the date of receipt of a copy of this order, failing

which, the arrears shall carry interest at the rate of 8% per annum.

9. Since the applicant has come to this Tribunal after a considerable delay, hence the arrears are restricted to three years preceding to the date of filing of the OA i.e. 24.12.2018.

10. OA stands disposed of in the above terms with no order as to costs.