(2020) 08 AFT CK 0005

In the Armed Forces Tribunal

Case No : Original Application No. 1386 Of 2017

Sanjeev Bhattacharjee APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 04-08-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2020) 08 AFT CK 0005

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

Bench : Division Bench

Advocate : J.P.Sharma, Ankur Chhibbe, K.K. Tyagi

Final Decision : Disposed Of

Judgement

1. Being aggrieved by denial of disability pension, the applicant has filed the present Original Application under Section 14 of the Armed Forces

Tribunal Act, 2007 wherein he has sought the following reliefs:-

(i) Quash and set aside the order dated 29.11.2016 as communicated to the applicant vide letter dated 08.12.2016, the order dated

08.12.2015 as communicated to the applicant vide letter dated 31.12.2015 and the letter dated 20.08.2014 passed by the respondents

whereby the applicant's claim for disability pension was rejected as neither attributable nor aggravated by military service; and

(ii) Direct the respondents to grant disability pension to the applicant at the rate of 75% in terms of Government of India letter dated

31.01.2001 along with interest: and

(iii) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case.

2 Brief facts of the case are that the applicant was commissioned in the Army on 23.08.1986 and superannuated on 31.08.2014. At the time of

retirement from service, he was brought before duly constituted release medical board which viewed his disability primary hypertension as aggravated

by service and assessed at 30% for life.

3. Learned counsel for the applicant pleaded that the applicant was commissioned in the Army in medically and physically fit condition. It was further

pleaded that the applicant was under stress and strain due to rigors of military service which has led to occurrence of the disability and the same has

correctly been reflected by RMB as 'Aggravated'. However, the competent authority has illegally declared the disease as NANA after overruling the

opinion of RMB. Learned counsel for the applicant pleaded for disability pension to be granted to the applicant for his disability Primary Hypertension

@ 30% and rounded off to the extent of 50%. The learned counsel also submitted that the applicant was re-employed after retirement and during re-

employment, he suffered from Coronary artery disease. However, he is not pressing for any relief on account of post retirement disease originated

during re-employment and wants to restrict his prayer only for the disability Primary Hypertension opined as aggravated by RMB.

4 Per Contra, learned counsel for the respondents argued that the competent authority has the right to review findings of RMB. Therefore, since the

Competent Authority has opined the disability to be NANA, hence the applicant is not entitled to disability pension for the aforesaid disability. He

further added that there is no record or opinion of his RMB after re-employment. Hence he is not in a position to comment on the second disability,

i.e., Coronary artery disease. He pleaded for dismissal of the O.A.

5. We have heard learned counsel for the parties and perused the records.

6 We have perused the RMB and noted that the applicant's disease, i.e., Primary Hypertension Â© 30% for life has been opined as aggravated by the

RMB. However, the same has been overruled by the Competent Authority and declared as NANA. Additionally, we have also noted that there is no

RMB submitted by the applicant or respondents on post re-employment disabilities, if any. Therefore, as per the prayer of the applicant, we restrict

ourselves only to the disabilities acquired before superannuation.

7. Thus, considering all issues involved in this case, and the law settled by the Hon'ble Supreme Court in the case 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 14.01.1993 and other rulings also on

supremacy of the Medical Board, we are of the opinion that the action of Competent Authority in overruling the opinion of RMB without conducting

physical examination of applicant by a higher Medical Board is not valid. Relevant portion of this judgment is as given below:-

U.... xxx ... 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.

8. In view of the above, we set aside the opinion of Competent Authority in dealing with disability of applicant as NANA and agree with the opinion of

RMB in declaring this disability, i.e., Primary Hypertension @ 30% for life as aggravated by service. Additionally, we are of the opinion that the

applicant is entitled to the benefit of broad banding @ 30% for life, which is to be broad-banded to 50% w.e.f. the date of discharge 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.

9. Accordingly, the respondents are directed to implement the order within a period of 4 months from the date of receipt of copy of this order, failing

which, the arrears shall carry interest at the rate of 6% per annum.

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

Pending applications, if any are disposed of accordingly.

Pronounced in open Court on 4th August 2020.