
(2019) 10 AFT CK 0038

In the Armed Forces Tribunal

Case No : Original Application No. 1143 Of 2017

Saranjit Singh Sahi

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0038

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

Bench : Division Bench

Advocate : I.S. Singh, V.S. Mahndiyan

Final Decision : Allowed

Judgement

1. Aggrieved by the impugned order dated 07.09.2016, denying him disability element of pension, the applicant has filed the instant O.A seeking the

following reliefs:

- (a) Set aside the impugned order dated 07.09.2016 passed by the Respondents;
- (b) Direct the Respondents to treat the disability with which the Applicant is suffering as Attributable to or Aggravated by military service;
- (c) Direct the Respondents to grant disability pension to the Applicant w.e.f. 01.04.1997;
- (d) Direct the Respondents to pay disability pension to the Applicant atleast @ 50% for life vv.e.f.01.04.1997 by rounding off the Applicant's disability as per Govt policy on broad banding/Rounding off.
- (e) Direct the Respondents to pay 10% interest on the arrears of disability pension w.e.f. 01.04.1997; and
- (f) Issue such other order(s)/direction(s) as may be deemed appropriate in the facts and circumstance of the case.

2. The facts of the case, in brief, are that the applicant was commissioned in the Indian Army on 02.03.1968 (SSC) and granted permanent

commission on 02.03.1973 and was retired from service on 31.03.1997 (AN) in low medical category after attaining the age of superannuation. The

Release Medical Board, (RMB) assessed his disability Primary Hypertension @ 30% for 2 years to be aggravated by military service. After

discharge, though the applicant is in receipt of service pension, his claim for disability pension has been denied on the ground that ADG PS, Army HQ

has overruled the opinion of RMB and rejected his claim of disability pension vide order dated 17.07.1998 and declared his disease as NANA.

Thereafter the applicant filed first appeal which was rejected by the competent authority vide order dated 27.04.1999 and the applicant filed second

appeal after a gap of 17 years which was also rejected by the competent authority vide order dated 07.09.2016. Hence the instant O.A.

3. Learned counsel for the applicant submitted that since the applicant was commissioned in the Indian Army in a medically fit condition and has been

retired from service in Low Medical Category and his disability has been accepted by RMB as Aggravated by military service and he should be

granted disability pension. He further submitted that the law on the supremacy of the opinion of a medical board has already been established by the

Hon'ble Supreme Court, hence action of higher authority i.e. ADG PS decision to overrule the opinion of RMB is wrong and should be set aside and

the applicant should be granted disability pension in accordance with the recommendations of RMB.

4. The respondents have not disputed that RMB conceded the disease of "PRIMARY HYPERTENSION" as aggravated by military service and his

percentage was assessed at 30% for two years. The learned counsel for the respondents submitted that after retirement, service pension has been

granted to the applicant. However, ADG PS as competent authority has overruled opinion of RMB and rejected the claim of disability element of

disability :- vide order dated 17.07.1998 on the ground that said disease is NANA. Hence the applicant is not eligible for disability pension.

5. We have heard the parties and perused the RMB in detail. The question before us is straight and simple i.e. is the action of ADG PS in overruling

the opinion of RMB correct and justified?

6. In this connection we have carried out a detailed scrutiny of the RMB and noted that the disease first started in the year 1992 after completion of

24 years of service when the applicant was posted in an operational area. The RMB has opined his case to be aggravated by military service on the

ground of strain of military service while posted as Comdg Officer.- from March to July 94 and operational duties within this period as per order of

duties attached".

7. In the above scenario, we find that the law on supremacy of the opinion of a medical board is no more RES INTEGRA and the same has been

settled by the 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. Relevant part of the judgment is as follows :-

From the above narrated facts and the stand taken by the parties before us, the controversy therein falls for determination by us 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 subject 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 Corps.

Thus in view of the aforesaid, we set aside the decision of ADG PS in overruling the opinion of the Release Medical Board (RMB). We are in

agreement with the opinion of RMB that the applicant's disease is Aggravated by military service to 50% for two years. Hence the disability of the

applicant is to be considered as 'Aggravated by military service. Additionally we have noted that the applicant is a senior citizen, close to 75 years of age

and his disability pension has been unfortunately denied to him since last 22 years by overruling the opinion of RMB which is not tenable. Thus

considering that 'Primary Hypertension' has no cure and can only be managed by

medicines, we are of the opinion that in the interest of substantive d to protect the applicant from further delay, his disability: Primary Hypertension' @ 30% for two years is to be deemed, Primary Hypertension' @ 30% for life after discharge for the of disability element.

8. In view of the above, the Original Application No. 13 of 2017 deserves to be partly allowed, hence, partly allowed. The impugned order dated

07.09.2016 passed by the respondents is set aside. The disability of the applicant "PRIMARY HYPERTENSION" is to be 30% for two years is to be

considered as Aggravated by military service with effect from the date of his discharge i.e. 1.03.1997. However, in view of law of limitation for

cases admitted despite delay and lapses, the applicant's arrears of disability element is to be restricted to a period of three years from the date of

filing (-Z ft O.A as per Honble Supreme Court decision in the case of Shiv Dass V. Union of India and others (2007 (3) SLR 445.) Thus, this O.A. is

07.07.2017. Respondents are directed to give effect to the order within four months from the date of receipt of a copy of this order. Default will invite interest

@ 8% per annum till actual date of payment.

9. No order as to costs.