
(2020) 03 AFT CK 0064

In the Armed Forces Tribunal

Case No : Original Application No. 1404 Of 2017, Miscellaneous Application No. 1047 Of 2017

Satyavir Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 17-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0064

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

Bench : Division Bench

Advocate : J.P. Sharma, Y.P. Singh

Final Decision : Disposed Of

Judgement

M.A. 1047 OF 2017

1. For the reasons carved out in application, the delay of 5082 days in filing the Original Application is condoned. MA stands disposed of.

O.A. No. 1404 of 2017

The applicant, Ex. MCEAR-II Satyavir Singh, through the medium of the instant Original Application is seeking the following reliefs:

(a) quash and set aside the impugned letter dated 26.02.1997 as Annexure A-1 Impugned order.

(b) Direct Respondents to grant Disability Element of Disability Pension in 2nd disability viz ""HYPERTENSION"" as accepted by Release

Medical Board as Aggravated by service due to stress and strain of service and assessment g25% for two years and thereafter rounding off

@25% to Â©50% wef 01.01 1996 to for life in terms of Govt of India. Min of Defence letter no 1(2)/97/D(Pen-C) dated 31.01.2001, Add!

Dte Gen of AG/PS-4(Legal) letter No. B/39022/Misc/AG/PS-4(L)/BC dated 25.04.2011 and law settled by Hon'ble Supreme Court in the case

of Ex Sapper Mohinder Singh Vs U01 & Ors in Civil Appeal No 164 of 1993, decided on 14.01.1993. in Civil Appeal No 418/2012 titled

U01 & Ors Vs. Ram Avtar decided on 10.12.2014 and part of arrears also settled by Hon ble Supreme Court in Civil Appeal No 9946 of

2016 (arising out of SLP (C) No 3353 of 2012 titled as Davinder Singh Vs U01 & Ors decided on 20.09.2016 along with interest @12%

p.a. w.e.f 01.08.1992 to till final payment is made.

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

2. Briefly stated facts of the case are that the applicant was enrolled in Indian Navy on 11.01.1973 and was discharged on 31.07.1992 in Low Medical

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

29.08.1992 assessed his disabilities (i) OBESITY-278 @20% for two years (ii) HYPERTENSION 401 @ 25% for two years (iii) HYPER

CHOLESTEREMIA @200/o for two years, composite @30% but opined the second disability to be aggravated by military service due to stress

and strain of service. For first and third disease opined to neither attributable to nor aggravated by service as they are constitutional in nature and not

connected with service. The Controller of Defence Accounts (CDA) (Naval) Mumbai has rejected the claim of the applicant for grant disability

element on the ground that ibid disabilities are neither attributable to nor aggravated by naval service which was intimated by Bureau of Sailor vide

their letter dated 23.07.1993. The 1st Appeal of the applicant has also been rejected by the respondents vide letter dated 26.02.1997. 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 enrolment, the applicant was found mentally and physically fit for service in the Indian

Navy and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Navy. The second disease i.e.

'HYPERTENSION - 401' of the applicant was contracted during the service and is opined to be aggravated by service by the RMB. The act of

overruling the recommendations of RMB by higher competent authority of CDA

(Naval) Mumbai was wrong and should be set aside. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension @25% and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that second disability of the applicant i.e. 'HYPERTENSION -401' has been regarded as 25% for two years by RMB as aggravated by service and the CDA (Naval) has rejected the claim of the applicant on the ground of NANA. 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. We are of the opinion that medical board which has examined the applicant is best placed to decide an attributability. Hence, the only question which needs to be answered is whether the CDA (Naval), Mumbai has power to overrule the opinion of the RMB without conducting another Medical Board?

6. This is a case where the RMB had conceded the second disease i.e. 'HYPERTENSION 401' of the applicant as aggravated by service as 25% for two years. However, CDA (Naval), Mumbai has rejected the claim of the applicant on the ground that the disabilities of the applicant are neither attributable to nor aggravated by service. However, it is clear that the higher competent authority i.e. CDA (Naval), Mumbai 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 CDA (Naval), Mumbai as well as order dated 26.02.1997 for rejecting the claim of the applicant for grant of

disability element and are of the considered opinion that the applicant was entitled to disability element for disease i.e. 'HYPERTENSION 401' @25%

for two years from the date of discharge i.e. 31.07.1992. However, he will not be entitled to broad banding because the provision of broad banding is

effective from 1996 and thereafter.

8. Since the applicant's RMB was valid for two years w.e.f. 31.07.1992, hence, the respondents will now have to conduct a fresh RSMB for him to

decide his future eligibility to disability element.

9. In view of the above, the Original Application No. 1404 of 2017 deserves to be partly allowed, hence, partly allowed. The impugned order dated

26.02.1997 passed by the respondents, enclosed as Annexure A-1 of the Original Application and decision of CDA (Naval), Mumbai which was

intimated by Bureau of Sailor vide letter dated 23.07.1993, are set aside. Since, the applicant's Riv113 was valid for two years w.e.f. 31.07.1992 and

in view of decision of the Hon'ble Supreme Court in Union of India Vs. Tarsem Singh, reported in 2009 (1) AISLJ 371 with regard to law of limitation,

the applicant is not entitled for the arrears of disability element. The respondents are directed to conduct a ReSurvey Medical Board for the applicant

to assess his further entitlement of disability pension. Respondents are directed to give effect to the order within four months from the date of receipt

of a certified copy of this order.

10. No order as to costs.

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

Pronounced in the open court on 17th March, 2020.