(2020) 02 AFT CK 0049

In the Armed Forces Tribunal

Case No : Original Application No. 1845 Of 2018, Miscellaneous Application No. 2054 Of 2018

Shardendu Dhar Pandey APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 17-02-2020

Acts Referred:

Citation : (2020) 02 AFT CK 0049

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

Bench : Division Bench

Advocate : O.S. Punia, Barkha Babbar

Final Decision : Disposed Of

Judgement

1. Counter affidavit as well as rejoinder has been filed.

Pleadings are thus complete.

Arguments heard. Vide separate order, OA stands disposed of.

M.A. No. 2054 of 2018:

Heard learned counsel for the parties on the point of delay. Delay of 365 days in filing the OA has been explained by the applicant. Keeping in view

the averments made in the MA and finding the same to be bonafide and in the light of the decision in Union of India and others Vs. Tarsem Singh

[2008 (8) SCC 648], we allow the instant MA and condone the delay in filing the OA. However, in case the applicant succeeds in the matter, he will

be entitled to the arrears restricted to three years prior to the date of filing the OA.

M.A. No. 2054 of 2018 stands disposed of accordingly.

O.A. No. 1845 of 2018:

2. The applicant, having been found medically and physically fit, was commissioned as an officer in the Indian Army on 08.06.1991. The applicant

proceeded on premature retirement on 30.04.2016. Before his release, the Release Medical Board (RMB) was carried out on 28.03.2016, which

assessed the applicant's disability (i) PRIMARY HYPERTENSION @ 30% for life and (ii) DYSLIPIDEMIA @ 11-14% for life with composite

assessment of disabilities @ 38% for life, and the applicant was placed at S1H1A1P2(P)E1 medical category. While the disability ID (i) 'PRIMARY

HYPERTENSION' was held by RMB 'as aggravated by service and connected to service', disability (ii) DYSLIPIDEMIA' was declared as 'neither

attributable to nor aggravated by military service' (NANA)'. Therefore, the applicant was assessed qualified for disability pension @ 30% for life.

However, the claim for disability pension was rejected by the competent authority by declaring both the disabilities to be 'neither attributable to nor

aggravated by military service' (NANA). Hence, the present Original Application.

3. 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.

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

found the disabilities ""Neither Attributable to Nor Aggravated by Military Service"". Moreover, as the applicant has taken premature retirement, he is

not entitled to any pension. However, the applicant relied on the Government of India (MoD) policy wherein it was decided to extend the benefit of

disability/war injury pension to all premature retiree including pre-2006 retiree to negate the denial of disability pension by the respondents on the

ground of premature retirement.

5. 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 Hon'ble 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 adetailed or higher

Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Corps.

6. Subsequent to this, the Integrated HQ of MoD(Army) issued letter dated 25.04.2011, which states, ""These alterations in the findings of IMB/ RME

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"".

7. 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 'PRIMARY

HYPERTENSION' was held aggravated by physical & mental stress and strain of military service and is, therefore, entitled for disability pension.

8. Considering the law laid down by the Hon'ble Supreme Court and also the attendant circumstances and issues discussed in detail above, the

rejection of the claim of the applicant is set aside with regard to disability 'PRIMARY HYPERTENSION' only, and the applicant is, thus, held entitled

to disability element of pension for PRIMARY HYPERTENSION only @ 30% for life, which is liable to be broadbanded to 50% in terms of

judgment of Hon'ble Supreme Court in Union of India Vs. Ram Avtar [Civil Appeal 418 of 2012] decided on 10.12.2014 from the date of discharge.

9. Accordingly, the respondents are directed to implement the order 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 6% per annum.

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