
(2019) 12 AFT CK 0039

In the Armed Forces Tribunal

Case No : Original Application No. 3029 Of 2019, Miscellaneous Application No. 1106 Of 2017

Uday Joshi

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 06-12-2019

Acts Referred:

Citation : (2019) 12 AFT CK 0039

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

Bench : Division Bench

Advocate : Kirtika Chhatwal, I.S. Singh, V.S. Tomar

Final Decision : Disposed Of

Judgement

1. Arguments heard.

Vide separate order, OA stands disposed of.

The applicant, having been found medically and physically fit, was commissioned in the Indian Army on 22.12.1974. During the service, he developed

certain medical conditions and after investigation, he was found to be suffering from 'CAD-POST PTLA STENT' and DYSLIPIDEMIA'. Finding

difficulty in discharging the duties efficiently, the applicant applied for premature retirement which was duly sanctioned by the Competent Authority

and he proceeded on premature retirement w.e.f. 13.08.2006 (AN). Before his release from service, the applicant was produced before a duly

constituted Release Medical Board (RMB) on 11.08.2006, which assessed the disabilities of the applicant as (i) 'CAD- POST PTLA STENT' @ 50%

for life and (ii) DYSLIPIDEMIA' 1-5% for life. While the RMB opined the disability (i) as 'aggravated by military service', but disability (ii) was held

as 'neither attributable nor aggravated by military service'. Although the applicant is in receipt of service pension, however, the claim for disability

element of pension was rejected on the ground that the applicant took premature retirement and also the disabilities were held by the Authority as

'neither attributable to nor aggravated by military service' (NANA).

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. As for denial of disability pension on the ground of premature retirement, 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.

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'" and that the applicant took premature retirement.

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 Hon'ble Supreme Court observed as under:

â?...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.

5. Subsequent to this, the Integrated HQ of MoD(Army) issued letter dated 25.04.2011, which states, "These alterations in the findings of IMB/ 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 and mental stress and strain of military service and is, therefore, entitled for disability pension.

7. The claim of the applicant was also denied on the ground that the applicant had sought premature retirement. At the time of his retirement, the

claim was not tenable in view of the prevailing policy of the Government. However, the same has undergone a sea-change in view of the policy letter

dated 19.05.2017 whereby the disability element of pension has been extended to pre-2006 retirees which included the Armed Forces Personnel who

sought voluntary/premature retirement. That being so, the applicant is entitled for disability element of disability pension.

8. Consequently, the OA is allowed and rejection of the claim of the applicant for disability element pension is set aside and we hold that he is entitled

to disability element of disability pension for disability (i) from the date of his discharge @ 50% for life, which is to be broad-banded to 73% 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 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.

10. 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. 07.07.2017.

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