

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

17.

O.A. No. 81 of 2012

Ex Sgt Arjun Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.M. Dalal, Advocate.

For respondents: Mr. Anil Gautam, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S. DHILLON, MEMBER.

ORDER

31.10.2012

1. Petitioner by this petition has prayed that the order dated 25th February 2011 passed by Air Force Records Office may be set aside and the opinion of Release Medical Board dated 7th August 2009 be set aside being arbitrary and contrary to the Entitlement Rules for Casualty Pensionary Awards 1982 and Medical Regulations. He has further prayed that the Respondents may be directed to grant him 30% disability pension with effect from 1st June 2010.
2. Petitioner was enrolled in Air Force as Driver M.T. on 11th May 1990 and during his service career he rose to the position of Sergeant. He suffered from a primary hypertension on 7th March 2005 while in Operation Location at Chhotan Hill. The Petitioner was treated in service hospitals and placed in low medical category P-2 (Permanent). The disease further aggravated and he was brought before the Release Medical Board on 7th August 2008 and the Release Medical Board opined

that the invaliding disease of the Petitioner was neither attributable to nor aggravated by the Air Force service and was constitutional in nature, not connected with service. The Release Medical Board assessed the disability of the Petitioner as 30% for life but that was not considered to be aggravated by or attributable to Air Force service for granting disability pension. His claim for disability pension was rejected by Air Force Records and, therefore, he filed first appeal on 25th April 2011 against the said order of the Records Office and the same was rejected by the communication dated 21st September 2011. Hence, the Petitioner has approached this Tribunal by filing the present petition.

3. A reply has been filed by the Respondents and the Respondents have contested the position and said that as per the Medical Board findings the disability is a constitutional one and it has nothing to do with the stress and strain of the Air Force service. Therefore, the disease of primary hypertension was not considered to be aggravated by the service and as such he has been rightly denied the benefit of disability pension.

4. Learned counsel for the Petitioner has submitted that perusal of the report of the Medical Board shows that the Medical Board has given no reason except "disease is constitutional in nature, and not connected with service." This is the conclusion given by the Medical Board but no reason for same has been mentioned by the Medical Board. They have also mentioned "as per para 43 of Guide to Medical Officers, 2002 & amended 2008". Learned counsel for the Petitioner has invited our attention to a decision of this Court in the case of **Nakhat Bharti etc. v. Union of India & Ors. (T.A. No. 48 of 2009)** wherein all the provisions of the

Entitlement for Pension Rules have been examined, and a detailed judgment has been delivered. Thereafter same judgment has been followed in the case of **Ex Gnr. Awadesh Kumar Singh v. Union of India & Ors. (O.A. No. 143 of 2010 decided on 25th April 2011)** and it was observed that the guidelines which have been issued are administrative instructions and cannot change the statutory provisions. It is observed that "but in the face of the statute those guidelines cannot be substituted. Rule 14B of the Entitlement Rules, rule 173 of the Pension Regulations and Regulation 423(c) of the Regulation for Medical Services for Armed Forces, 1983 if read together then it is a mandate on the medical authorities that they will have to give a reason that at the time when person was inducted in service was he suffering from any of the diseases on which he was sought to be invalided out of service. If that is not then law does not contemplate any guidelines which can substitute for these statutory provisions." Therefore, simply mentioning the guidelines is not a proper discharge of the duties by the Medical Board. They must have examined the incumbent and thereafter they must give reason. Learned counsel for the Petitioner has submitted that the attention of the Medical Board was invited to the aforesaid decisions however the Medical Board has recorded that the disease is constitutional in nature and not connected with service but no reason has been given. Therefore, we set aside the findings of the Medical Board as well as the order of the Appellate Medical Board and remit this case back to the Medical Board for re-examining the Petitioner and then recording their reasons in light of the aforesaid decisions. In case, the Medical Board finds that that disability is aggravated by or attributable to Air Force service, then benefits may accordingly be given to the Petitioner. The Medical Board shall be constituted by the Director

General Medical Services (Air) and shall fix a date for re-examining the Petitioner.
This exercise should be done as far as possible within three months.

5. The petition is allowed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
October 31, 2012
dn/pd