

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

B.

OA 252/2017

Col Sunil Kumar Sarin (Retd.)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

: Mr. AS Puar, Advocate

For Respondents

: Mr. Avdhesh Kumar Singh, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER
26.09.2023

Vide our orders of even date, we have allowed the OA. Faced with the situation, learned counsel for the respondents makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007, to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[RAJENDRA MENON]
CHAIRPERSON

[P.M. HARIZ]
MEMBER (A)

Neha

In the matter of :

Colonel Sunil Kumar Sarin, Retd ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Aditya Singh Puar, Advocate

For Respondents : Shri Avdhesh Kumar Singh, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

The applicant, having been found medically and physically fit, was commissioned in the Indian Army on 04.08.1984. He was released from service on 31.03.2014 being in low medical category. The Release Medical Board (RMB) was conducted before his retirement, which assessed the applicant's disabilities, namely, (a) CERVICAL SPONDYLOSIS @ 30% and (b) PRIMARY HYPERTENSION @ 20%, net assessment of the same as 50% for life for both the disabilities and the same are accepted as 'aggravated by military service'. However, the competent authority accepted the recommendation of the RMB in respondent of the first ID

i.e. Cervical Spondylosis, however, the other disability i.e. Primary Hypertension was assessed as 'neither attributable to nor aggravated by military service (NANA). Hence, the applicant was granted disability element of pension @ 30% for life in respect of the disability ID (a) with effect from 01.04.2014.

2. Aggrieved by this, the applicant preferred first appeal on 25.03.2015 which was rejected by the competent authority vide letter dated 17.12.2015. Therefore, the applicant has filed the present OA seeking enhancement of the disability pension with the benefit of braodbanding.

3. It is submitted by the learned counsel for the applicant that once the RMB has assessed both the disabilities suffered by the applicant as 'aggravated by military service', this interference by administrative authorities by assessing the second disability i.e. Primary Hypertension as neither attributable to nor aggravated by service, is against the law laid down by the Hon'ble Supreme Court in its judgment in the matter of Ex Sapper Mohinder Singh Vs. Union of India and Another [Civil Appeal No. 164 of 1993] 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 applicant ineligible for grant of disability pension as per the existing rules/provisions and on the grounds including the disability first occurred in peace station.

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 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, wherein the Hon'ble Supreme Court observed as under :

".... 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."

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/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."*

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 was held aggravated by military service for the reason that at the time of origin of the disability, Primary Hypertension, the applicant was posted in Hard Non Military Station, Contai, equivalent to field posting. Therefore, the applicant is entitled for disability pension.

8. Regarding the issue of primacy of the medical board, the Hon'ble Supreme Court in its judgment in the case of **Union of India Vs. Ravinder Kumar [Civil Appeal No.1837 of 2009]** decided on 23.05.2012, has explicitly viewed that :

"5. We are of the view that the opinion of the Medical Board which is an expert body must be given due weight, value and credence. Person claiming disability pension must establish that the injury suffered by him bears a causal connection with military service.

6. In the instant case, the Medical Board has opined as under :

"ID Generalised Tonic Seizure. MA opined that ID is genetic in origin, not connected with service.

Thus, in view of the above, it is evident that the ailment with which respondent has been suffering from is neither aggravated nor attributable to the Army Service."

9. Consequently, the OA is allowed and hold that the applicant is entitled to disability element of pension for the disability (b) Primary Hypertension also from the date of his release. As the applicant was already granted disability element of pension for the disability (a) Cervical Spondylosis, we direct that now the applicant be granted disability element of pension @ 50% for life from the date of release, after adjusting the payment regarding disability element of

pension already made, which is to be broad-banded to 75% 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.

12. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of a copy of this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

13. In view of the above, pending MAs, if any, stand closed accordingly.

Pronounced in open Court on this 20th day of September, 2023.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[LT GEN P.M. HARIZ]
MEMBER (A)

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IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH

NEW DELHI

O.A. No. 259 of 2017 AP

IC-43180F, COLONEL SUNIL KUMAR SARIN, (RETD)

...Applicant

Vs.

UNION OF INDIA & ORS.

...Respondents

MEMORANDUM OF PARTIES

1. IC-43180F Colonel Sunil Kumar Sarin, (Retd), son of Late Shri Ram Dev Verma, resident of EC-379, Maya Enclave, Hari Nagar, New Delhi 110 064

...Applicant

Vs.

1. Union of India through Secretary to Govt of India, Ministry of Defence, South Block, New Delhi - 110 011

2. Additional Director General of Personnel Services, PS Directorate, Sena Bhawan, DHQ PO, New Delhi - 110 011

3. Additional Director General of Manpower (Policy & Planning), Adjutant General's Branch, West Block III, R.K. Puram, New Delhi - 110 066

4. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad (UP)

...Respondents

DATE: 13.02.17

PLACE: New Delhi


APPLICANT

THROUGH

DATE: 13.02.17

PLACE: New Delhi


COUNSEL

ADITYA SINGH PUAR
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