

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL
BENCH AT CHANDIMANDIR**

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OA 1722 of 2017

Amarjit Singh	Applicant(s)
Vs		
Union of India and others	Respondent(s)

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For the Applicant (s) :	Mr Sandeep Bansal, Advocate
For the Respondent(s) :	Mr. Parmod Kumar Sharma, Sr. PC

CORAM:

HON'BLE MR JUSTICE MS CHAUHAN, MEMBER (J)

HON'BLE LT GEN DS SIDHU, MEMBER (A)

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ORDER
19.09.2017

1. By means of the present petition, filed under Section 14/15 of the Armed Forces Tribunal Act, 2007, the applicant has prayed for setting aside decision of PCDA (P) Allahabad and for granting disability pension with benefit of rounding off from the date of discharge i.e. 01.06.2000.
2. The facts of the case in brief, are that the applicant was enrolled in the Army on 26.09.1980 and invalidated from service on 31.05.2000 after completion of more than 19 years of service. While serving in field area, he was found to have suffered from ***“PRIMARY HYPERTENSION-401”*** and downgraded to medical category CEE (T). Before discharge from service, the applicant was brought before the Release Medical Board on 22.01.2000, which assessed the disability percentage to be 30% composite for two years and held that the disability ***“HYPERTENSION”*** was aggravated due to stress and strain of the military service, and the medical category as CEE (P). However, the claim for disability pension was rejected by the PCDA (P) Allahabad, by declaring it to be neither attributable to nor aggravated by military service, constitutional in nature and not related to service. 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 **Civil Appeal No. 164 of 1993 (arising out of SLP No. 4233 of 1992), *Ex Sapper Mohinder Singh Vs Union of India and another*** decided on 15.01.1993.

4. Notice. Mr. Parmod Kumar Sharma, Sr.P.C. appears and accepts notice on behalf of the respondents.

5. Admitted.

6. Mr. Parmod Kumar Sharma, Sr. PC, counsel for the respondents conceded that the matter may be disposed off as the same is squarely covered by judgement of ***Ex Sapper Mohinder Singh Vs Union of India and another*** (*supra*). Since the point in issue is no longer res-integra and covered by the policy of the respondents, therefore we do not insist upon the respondents for a formal reply, as it will not improve their case and it shall be sheer wastage of public money and time.

7. With the consent of the learned counsel for the parties, the matter is taken on board for disposal.

8. In **Ex Sapper Mohinder Singh (Supra)** it was observed by the Hon'ble Supreme Court as under:

"...x....xxx...xx...xx...xx... 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."

9. 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 physical 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”***.

10. We note that the case was filed on 03.07.017 and today when the case came up for hearing, we enquired from the learned counsel for the respondents as to what action had been taken by them in the three months which had elapsed. We were shocked by their submission, that so far no action had been taken and they will commence seeking comments now. The respondents are given an advance copy of the OA for the purpose of checking the facts and if it is a genuine case, they should either grant the benefit or withdraw from the case. In this case no such action was taken, which has not only forced the applicant to expend his scarce financial resources but also valuable time and effort, in a case which should have been allowed at the first instance. We are of the view that the applicant needs to be suitably compensated for this.

11. In the light of the judgment of the Hon’ble the Supreme Court in ***Ex Sapper Mohinder Singh (Supra)*** we are satisfied that the claim for disability pension was wrongly interfered with by the PCDA(P) Allahabad. As per the findings of Release Medical Board the applicant’s disability was held aggravated due to stress and strain of military service and is therefore entitled for disability pension.

12. Consequently, the petition is allowed and the orders rejecting the claim of the applicant on the ground that his disability was held to be not aggravated by military service, (A-3 & A-4) are hereby quashed and set aside, with a direction to the respondents to grant disability pension to the applicant with effect from 01.06.2000 for 30% disability for a period of

two years. In view of the decision of the Hon'ble Supreme Court in **Civil Appeal No.418 o 2012 (*Union of India and others versus Ram Avtar*) decided on 10.12.2014**, the benefit of rounding off to 50% as against 30% for two years is allowed.

13. On verification of the aforesaid factual facts from their record, the respondents are directed to make necessary calculations and make payment to the applicant, within a period of three months from the date of receipt of certified copy of this order by learned counsel for the respondents, failing which the amount shall carry interest at the rate of 8% per annum from the date it fell due.

14. The O.A. stands allowed **with costs, quantified at Rs 15,000/- to be paid by the respondents to the applicant for not taking any action on their own policy dated 25.04.2011.**

15. The respondents will hold a Re-survey Medical Board (RSMB) within three months of the date of receipt of certified copy of this order by the learned counsel for the respondents to assess the interim and future disability. The payment of disability element for two years will be de-linked from the holding of the RSMB.

(DS Sidhu)
Member (A)

(MS Chauhan)
Member (J)

19.09.2017
Dhameja