

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 232 of 2010
[Writ Petition No. 1041 of 2009 (S/S)]

Monday the 8th day of November, 2010

“Hon’ble Mr. Justice A.N. Varma, Member (J)
Hon’ble Lt. Gen. R.K. Chhabra, Member (A)”

Kishan Singh, ex Naik/TS (No. 417645 – F of 19 KR) Village-Upna, PO Chaunala,
Distt-Pithoragarh (UK)

Applicant

By Legal Practitioner Shri Gopal Datt Joshi , Advocate.

Versus

1. Union of India through the Secretary Ministry of Defence, M Block, New Delhi-110011
2. PCDA (Pension) Allahabad, UP.
3. The Senior Records Officer, The Records, The Kumaon Regiment, PIN-900473, c/o 56 APO

Respondents

By Legal Practitioner Shri K D Nag and Shri Raj Kumar Singh , Advocate, Central Government Counsel.

ORDER

“Hon’ble Mr. Justice A.N. Varma”

1. The Applicant was enrolled in Indian Army on 07.04.1981 and was boarded out on 30.4.1998 on the ground of medical disability suffering from ‘Lumber Canal

Stenosis Marginal and Bulging IV Disc L-3-4-5 742,792 V67. He has served in the Army for more than 17 years. Composite disability was assessed as 20%.

2. The Applicant by means of writ petition no. 1041 of 2009 approached the High Court of Uttarakhand at Nainital praying therein for following reliefs :-

a) Issue a writ or order of Certiorari to quash the letter No 4176451/130/DPR dt 23 March 2007 issued by Respdt No 3 denying the petitioner any disability pension because of his disability is below 20% (11-14%).

b) Issue a writ or order in the nature of Mandamus directing the Respondents to grant him Disability Pension in accordance with the revised disability pension rules as applicable wef 1.5.96 in accordance with Govt of India, Min of Def letter dt 31.1.2001 as per Annexure No IX to the writ petition at para 12 above.

c) Such other order or direction as the Hon'ble court may deem it fit under the circumstances of the case.

d) Award cost of the writ petition including litigation expenses in favour of the petitioner for the forced litigation of the case.

3. Upon the constitution of Armed Forces Tribunal under the Armed Forces Tribunal Act 2007 the matter was transferred in exercise of power under section 34 of the Act, as such the same is before us.

4. We have heard Shri Gopal Datt Joshi learned Counsel for the Applicant and Shri KD Nag and Raj Kumar Singh, Central Government Council for the respondents at some length. Shri Joshi submitted that the claim of the Applicant for disability pension was referred to PCDA and the same has wrongly been denied. Vide order dated 07.10.1998 (Annexure no. 2) of the petition, Major

Record Officer informed the Applicant that the respondent no. 2 has negated the claim of disability pension as it had been assessed to less than 20% by the PCDA (11% to 14%). Learned Counsel for the Applicant drew our attention to words annexure no. CA-1 which is the opinion of the Medical Board perusal of which shows that the disability from which the Applicant was suffering occurred on account of stress and strain of military service. It however reveals that the composite disability was assessed as 20%. Learned Counsel submitted that when the medical board opined that the composite disability of Applicant was 20% then the respondent no. 3 just on the basis of record can not come to the conclusion that the disability, though according to them too having aggravated by military service could not be assessed as less than 20%. According to him medical board recorded its opinion after physically examining the applicant whereas the respondent no. 2 decided the question of disability pension just on the basis of record available before us. No physical examination of the applicant was carried out by the Principal Controller of Defence Accounts.

5. In support of his arguments the learned Counsel relied upon a decision rendered by a Division Bench of Delhi High Court in Civil Writ Petition No. 5166 of 2002 (XX) and other connected matters decided on 06.03.2003.

6. Learned Central Government Counsel in opposition submitted that the claim regarding disability pension has rightly been dealt with by respondent no. 2 as though the disability may have been aggravated by or attributable to Military Service but it has been assessed to less than 20% that is 11 to 14 percent as such the applicant was not entitled for disability pension. According to him since the Medical Advisor (Pension) was empowered to reassess the applicant as such the

case has been properly dealt with and no interference in the impugned order is called for by this Tribunal.

7. In the case of Recruit Kishan Singh (Supra) the Delhi High Court relying upon its earlier Division Bench case in case of Signalman Shri Bhagwan Versus Union of India and others observed as follows :-

“The opinion of a Medical Board that examines an individuals will have primacy over the opinion of any other medical authority (including the opinion of a “next medical authority” or even the Medical Adviser (P) attached to the office of the CDA or the CCDA) unless that other medical authority has also examined the individual. Alternatively, the Medical Board may reconsider its opinion after a fresh examination of the individual. The exception to this will be in cases where the “next higher medical authority” or the Medical Adviser (P) takes a view which favours the individual.”

8. In Secretary, Ministry of Defence and others Versus Damodaran AV case reported in Mil LJ 2009 SC 107 the Apex Court has held that the Medical Board is an expert body and its opinion is entitled to be given due weightage, value and credence and Medical Board opinion to be accorded primacy.

9. In view of what has been held by the Apex Court and Division Bench of Delhi High Court the opinion expressed by the Medical Board has to be accorded primacy. The opinion of the Medical Board which examines an individual will obviously have to be accorded supremacy in relation to opinion of any other Medical Authority.

10. We thus find that the claim of the applicant regarding disability pension has wrongly been dealt with by respondent No. 2.

11. The Transferred Application in the circumstances succeeds and is allowed. The order dated 23.03.2007 and 07.10.1998 are hereby quashed. The applicant shall be entitled to all consequential benefits.
12. No order however as to costs.

(Lt. Gen. R.K. Chhabra)
Member (A)

(Justice A.N. Varma)
Member (J)

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