

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 331 of 2018**Monday, this the 13th day of May 2019**"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"**

Col Faiz Ahmed Farooquee (No. IC 40831F), son of Late A.H. Farooquee, resident of House No. H-271, Tyagi Vihar, Sharda Nagar (AWHO Colony), Lucknow (Uttar Pradesh)-226002.

..... Applicant

Ld. Counsel for the : **Shri Yashpal Singh**, Advocate.
Applicant

Versus

1. Union of India through Secretary, Ministry of defence, South Block, New Delhi.
2. Additional Director General Personnel Services, Adjutant General's Branch, Integrated Headquarters of Ministry of defence (Army), Room No 11, Plot No 108 (West), Brassey Avenue, Church Road, New Delhi-110001.
3. Appellate Committee of First Appeal through its Chairman, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), Room No 11, Plot No 108 (West), Brassey Avenue, Church Road, New Delhi-110001.
4. Second Appellate Committee on Pension through its Chairman, Adjutant general's Branch, Integrated Headquarters of Ministry of Defence (Army), Room No 11, Plot No 108 (West), Brassey Avenue, Church Road, New Delhi-110001.
5. Additional Director Genral of Manpower Planning/MP-6 (B), West Block-III, R.K. Puram, New Delhi-66.
6. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad-211014.

.....Respondents

Ld. Counsel for the : **Shri Bhanu Pratap Singh**,
Respondents. Central Govt. Standing Counsel

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (a) *Issue/pass an order or direction setting aside the order/letter dated 06.09.2016, order/letter dated 06.06.2017 and order/letter dated 01.01.2018 passed/issued by Additional Director General Personnel Services, Appellate Committee of First Appeal and Second Appellate Committee on Pension respectively, rejecting the claim of the applicant for grant of disability pension for the disability ‘Primary Hypertension’, after summoning the relevant original records; and directing the respondents to reconsider and grant disability pension for the disability ‘Primary Hypertension’ extending the benefit of rounding off from the date of retirement including arrears thereof with interest.*
- (b) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (c) *Allow this Original Application with cost.*

2. Brief facts of the case are that the applicant was commissioned in the Indian Army on 24.12.1982 and superannuated on 31.05.2016. The Release Medical Board (RMB) held at Command Hospital (Central Command) on 08.01.2016 assessed his disability ‘Primary Hypertension’ @ 30% for life and ‘Primary Open Angle Glaucoma BE with Old Serous Retinopathy Right EYE (Effect of)’ @ 40% for life and opined it to be aggravated by military service. The composite disability element for both the disabilities was assessed @ 60% for life. The competent authority vide order dated 06.09.2016 conceded ‘Primary Open Angle Glaucoma BE with Old Serous Retinopathy Right EYE (Effect of)’ as aggravated by military service but rejected the disability ‘Primary Hypertension’ on the

ground that this disability is neither attributable to nor aggravated by military service (NANA). First and second appeals against rejection of disability element were rejected by the competent authority vide order dated 06.06.2017 and 01.01.2018 respectively on the ground that the onset of the disability was in peace station. It is in this perspective that the applicant has preferred the present O.A.

3. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of commission as an officer. He had picked up these diseases due to stress and strain of service. He drew our attention to the endorsement made on page 4 of the RMB which clearly opines that both the disabilities are aggravated by military service. However the competent authority has overruled the opinion of RMB and denied grant of disability element for 'Primary Hypertension' on grounds of the disease being NANA. He pleaded that the disability element for 'Primary Hypertension' should also be granted to the applicant as recommended by the RMB.

4. On the other hand, Ld. Counsel for the respondents conceded that both the disabilities of the applicant had been opined to be aggravated by the RMB. He contended that disability 'Primary Hypertension' of the applicant has been regarded as NANA by the competent authority, hence he is not entitled to disability pension for the said disability. He further stressed that in the instant case onset of disability was in a peace station and there is no close time association with stress/strain of service as associated with Field/High Altitude/Counter Insurgency Operations. He also contended that since the competent authority has considered the disability 'Primary

Hypertension' as neither attributable to nor aggravated by military service, as such his claim for disability pension has been rightly rejected in accordance with Para 173 of the Pension Regulations for the Army, 1961 (Part-I) which clearly states that disability pension is admissible to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by military service and is assessed at 20% or more. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB and rejection order of the first and second appeals.

6. It is observed that in the instant case the competent authority has overruled the opinion of the RMB and declared the first disability i.e. 'Primary Hypertension' as neither attributable to nor aggravated by military service. The issue of sanctity of the opinion of a Medical Board and its overruling by a higher formation is no more Res Integra. The Hon'ble Supreme Court has made it clear that without physical medical examination of the patient a higher formation cannot overrule the opinion of a Medical Board. Thus in light of the observations made by the Hon'ble Apex Court in the case of **Ex Sapper Mohinder Singh vs. Union of India & Others** in Civil Appeal No 104 of 1993 decided on 14.01.1993, we are of the considered opinion that the decision of competent authority in over ruling the opinion of RMB is void in law. The relevant part of the aforesaid judgment is quoted below:-

“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 Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. 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 Core.”

7. In view of the above, we are of the view that the applicant is held entitled to 60% disability for life which shall stand rounded off to 75% disability for life in terms of **Union of India vs Ram Avtar & Ors**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

8. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The applicant shall be entitled to disability element @ 60% for life to be rounded off to 75% for life w.e.f. date of discharge i.e. 01.06.2016. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: May, 2019
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