

RESERVED**COURT NO. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****O.A. No. 259 of 2016****Thursday, this the 5th day of October, 2017****"Hon'ble Mr. Justice D.P.Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)"**

IC- 47886N Colonel Rana Pratap Singh, S/o late Kamal Singh, House No. B-56, south City, Raebareli Road, Lucknow, P.O. Ambedkar University - 226 025----- **Applicant**

Ld. Counsel appeared for the petitioner - **Shri Virat Anand Singh, Advocate,**

Versus

1. Union of India through the Secretary Ministry of Defence South Block, New Delhi - 110 011.
2. Chief of the Army Staff, Integrated headquarter of Ministry of Defence (Army) DHQ PO, New Delhi - 110 011.
3. Director AG/PS-4 (Imp-II) for Adjutant general Additional Directorate General Personnel Services Adjutant General's Branch Integrated, Headquarters of Ministry of Defence (Army) Plot No. 108 (Est) Brassy Avenue, Church Road, New Delhi - 110 001
4. Dy. Director AG/PS-4 (Imp- II) for Adjutant General, Additional Directorate General Personnel Services, Adjutant General's Branch Integrated, Headquarters of Ministry of Defence (Army), Plot No. 108 (Est), Brassy Avenue, Church Road, New Delhi - 110 001.
5. Chairman, appellate Committee on Second Appeals, Dy. Director AG/PS-4, ADG Personnel Services, Adjutant General Branch, Integrated Headquarter of Ministry of Defence (Army), Room No. 11, Plot No. 108 (West), Brassey Avenue, Church Road, New Delhi - 110 001.

-----**Respondents**

Ld. Counsel appeared for the Respondents - **Shri D.K. Pandey, Advocate, Addl Central Govt. Standing Counsel.**

Assisted by - **Maj Salen Xaxa, OIC Legal Cell.**

ORDER**“Per Hon’ble Air Marshal Anil Chopra, Member (A)”**

1. This Present Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension.

2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was commissioned in the Indian Army on 11.06.1988 (PC) and retired from service on 31.10.2014 (AN) on reaching the age of superannuation. At the time of retirement from service, the officer was brought before duly constituted Release Medical Board at Military Hospital Bareilly on 02.06.2014 which viewed his IDs (i) PRIMARY HYPERTENSION - @ 30%, (ii) 20% and (iii) DYSLIPIDEMIA @ 1-5%. The release Medical Board concluded on 24.07.2014 and assessed the IDs as NANA case with the composite degree of disablement @ 40% for life. The Applicant had joined service in medically fit condition and was retired from service on 31.10.2014 on reaching the age of superannuation on completion of 26 years 04 months and 20 days of service. Applicant preferred 1st appeal on 13 Nov 2014 and 2nd appeal on 12 Sep 2015 against rejection of his disability pension and the same was

rejected by the competent authority vide AG's Branch letter No.13301/IC-47886N/ASC/MP6(E)/140/2014/Appeal/AG/PS-4 (Imp-II) dated 17 Jun 2015 and IHQ of Mod(Army), AG/PS-4(2nd Appeal) letter No B/38046A/357/2015/AG/PS-4(2nd appeal) dt 02 May 2016.

3. Being aggrieved by denial of disability pension, the petitioner has approached this Tribunal by means of present O.A.

4. We have heard Shri Virat Anand Singh, Ld. Counsel for the applicant and Shri D.K. Pandey, Ld. Counsel for the respondents, assisted by Maj Salen Xaxa, OIC Legal Cell and perused the record.

5. Learned counsel for the applicant submitted that since the applicant was commissioned in medically fit condition and retired in Low Medical Category, and that the Release Medical Board also opined that the disability was attributed to and aggravated by military service, his disability should be considered as attributable to military service and he should be granted disability pension. He further submitted that the ADGS (PS) had no authority to sit over the opinion of the Experts consisting in Release Medical Board.

6. While filing counter affidavit, the respondents have not disputed that the applicant suffered disability to the extent of 40% for life, but submitted that the disability had

its origin in (i) PRIMARY HYPERTENSION - @ 30%, (ii) 20% and (iii) DYSLIPIDEMIA @ 1-5%. He was considered as neither attributable to nor aggravated by military service, as such, entitlement to disability pension are governed by the eligibility conditions enumerated in Regulation 81 of Pension regulations for the Army, 2008 Part I (In short referred to as Pension Regulation for Army) which stipulates that unless otherwise specifically provided disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on account of a disability which is either attributable to or aggravated by military service in non-battle casualty cases and the disability is assessed at 20% or more. His claim has correctly been rejected. It is also averred in para 9 of the counter affidavit that the opinion of the Medical Board can be overruled by Competent/Administrative Authority.

7. Since the applicant was commissioned in a medically fit condition and retired after approximately 26 years 04 months and 20 days of service in low medical category and respondents have not produced any documents on record to prove that the disability/disease existed at the time of commissioning. The disability has to be considered as attributable to and aggravated by military service in terms of judgment of ***Dharamvir Singh vs. Union of India and***

others, reported in (2013)7 SCC 316, **Sukhvinder Singh vs. Union of India**, reported in (2014) 14 SCC 364, **Union of India and others vs. Angad Singh Titaria**, reported in (2015) 12 SCC 257 and **Union of India and others vs. Rajbir Singh**, reported in (2015) 12 SCC 264 and the Applicant is considered entitled for grant of disability pension.

8. Since the medical board has assessed the disability as viewed his IDs (i) PRIMARY HYPERTENSION - @ 30%, (ii) 20% and (iii) DYSLIPIDEMIA @ 1-5% and composite disability 40% for life, as such keeping in view the judgment of **Veer Pal Singh vs Ministry of Defence**, reported in (2013) 8 SCC 83, we feel that the case of the applicant should be recommended for Re-survey Medical Board to reassess further entitlement of disability pension, if any.

9. The last submission of the learned counsel for the respondents that the opinion of the Medical Board can be overruled by competent administrative authority, does not commend to us for acceptance inasmuch as in view of the ex-cathedra decision of Hon'ble The Apex Court in the case of **Ex-Sapper Mohinder Singh vs Union of India in Civil Appeal No 104 of 1993 decided on 14.01.1993** nodded with approval in **Babu Singh Vs Union of India**

and others CWP No 3296 of 2003 decided on 26.4.2006. The observation made in the decision of **Ex.Sapper Mohinder Singh (supra)** being relevant 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 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 Core."

10. In view of the above, the Pension Sanctioning Authority has erroneously passed the impugned order of rejection based on the report of the Medical Officer attached to it in the teeth of the opinion of the Medical Board.

11. In view of the above the Original Application deserves to be **allowed**.

12. Accordingly the O.A. is **allowed**. The impugned orders dated 24.09.2014, rejecting claim of disability pension, 17.06.2015 rejecting first appeal & 02.05.2016

rejecting second appeal are set aside. The respondents are directed to grant disability pension to the applicant @ 40% for life, which would stand rounded off to 50% for life from the date of discharge. 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. In case the respondents fail to give effect to this order within the stipulated period, they will have to pay interest @ 9% per annum on the amount accrued from due date till the date of actual payment.

13. No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated : October, ,2017
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