

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET
OA No 148/2017

CORAM : HON’BLE MR JUSTICE MOHAMMAD TAHIR, MEMBER (J)
HON’BLE VICE ADMIRAL P MURUGESAN, MEMBER (A)

APPLICANT : Nandraj Lama

RESPONDENT (S) : Union of India & Others

Legal Practitioner of applicant(s) : Legal Practitioner for Respondent

Mr Aniruddha Datta, Advocate : Mr Ashish Kumar Chaterjee,
Advocate

	<p><u>ORDERS OF THE TRIBUNAL</u></p> <p>Order Serial Number : Dated : 07.02.2020</p>
	<p>By means of this OA filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has sought directions to the respondents to disability element of disability pension at the rate of 75% as against 50% after rounding off.</p> <p>Briefly stated the facts of the case are as such that the applicant entered the military service in a fit medical condition on 12.06.1982 and was released from service on 31.05.2015. During the service he earned the disabilities (i) DIABETES MELLITUS TYPE II(20%) (ii) PRIMARY HYPERTENSION(40%) and the composite disability was assessed as 50% and held to be aggravated by the military service. However, the applicant was denied the disability element of disability pension and was granted only the service element. Hence, this Original Application has been filed.</p> <p>Heard the learned counsel for both the parties and perused the</p>

record.

Grievance of the applicant is that though the disabilities earned by the applicant have been accepted by the Medical Board as *aggravated by military service* but disability pension has been denied to him on account of unnecessary interference by the Pension Sanction Authority which is not permissible in terms of *Judgement of Hon'ble Supreme Court* rendered in *Civil Appeal No 164 of 1993 (arising out of SLP No. 4233 of 1992), Ex Sapper Mohinder Singh and Ors* decided on 14.01.1993. Nothing to the contrary has been referred to on behalf of the respondents.

In that view of the matter, this case is covered by the judgment of the Hon'ble Supreme Court rendered in *Ex Sapper Mohinder Singh's case (supra)* wherein it has been held, "*that the disability assessed by the Medical Board, which has examined the applicant, should be respected, until a fresh Medical Board examines the appellant again and comes to a different conclusion*". In this case, no fresh Medical Board was held. Later, ADG PS, AG's Branch, vide their policy letter dated 25.04.2011, addressed to all Commands informed that, "*the alterations in the findings of the IMB/RMB by MA(P)/PCDA(P) Allahabad, 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” and directed all Record Offices to withdraw un-conditionally from such cases, notwithstanding the stage they may reached and such files be processed for Government Sanction.

In the circumstances, we dispose of this Original Application with a direction to the respondents to process applicant’s claim for disability element of disability pension in terms of the aforesaid judgement from the date of his retirement i.e. 01.06.2015 and on verification of the facts, if he is found entitled to the same, release it together with arrears to the applicant as expeditiously as possible but not later than four months from the date of receipt of copy of this order by learned Government counsel/OIC Legal Cell. While doing so respondents shall also keep in mind judgement of *Hon’ble Supreme Court*, rendered in *Civil Appeal No 418 of 2012 (Union of India and Others Vs Ram Avtar)* decided on *10.12.2014*.

No order as to costs.

(P MURUGESAN)
MEMBER(A)
SKS/07.02.2020

(MOHAMMAD TAHIR)
MEMBER (J)