

FROM NO. 21

(SEE RULE 102(1))

ARMED FORCES TRIBUNAL , KOLKATA BENCH

APPLICATION NO : OA NO.03/2011

ON THURSDAY this the 22nd day of MARCH, 2012

CORAM

HON'BLE JUSTICE SADHAN KUMAR GUPTA , MEMBER (JUDICIAL)

HON'BLE LT GEN K.P.D. SAMANTA, MEMBER (ADMINISTRATIVE)

ANANDA GOPAL SAHA,
Son of Late Purna Chandra Saha resident of Village & P.O. – Tungji,
P.S. Nowda, Dist –Murshidabad,
West Bengl, Pin Code – 741156.
Present Address : Navin Market, Mira Bazar
Plassey, Dist. Nadia, West Bengal, Pin – 741156.

.....Petitioner

-VS-

1. Union of India, service through the
Secretary, Department of Defence, Govt. of India,
New Delhi, South Block – 110001.
2. The Additional Director General Personal Services,
Adjutant General's Branch, Integrated HQ of MOD (Army),
AHQ/P.O. – New Delhi – 110011.
3. The Director General of Armed Forces Medical Services,
Officer of the D.G.A.F.M.S./M.S. (Pen), Room No. 132,
L Block, Ministry of Defence, New Delhi – 110001.
4. The Commandant Base Hospital, Delhi Cantt,
Pin – 900106, C/o 56 APO
5. The OIC NER Group,
Signal Records (Corps of Signals)
Post Bag No. 05, Jabalpur (M.P.)

6. The Commanding Officer,
Military Hospital, PNJIM,
Goa.
7. The Principal Controller of Defence Account (P),
Allahabad (U.P.).
8. Dy. D.A.D.S. Allahabad, (U.P.)
9. The Senior Records Officer,
OIC Records, Signal Records (Corps of Signals),
PIN – 901124, C/o 56 APO.

..... Respondents

For the petitioner : Mr. Dilip Kumar Maiti , Advocate

For the respondents : Mr. Anand Bhandari , Advocate

O R D E R

Per HON'BLE LT GEN K.P.D. SAMANTA, MEMBER (ADMINISTRATIVE)

1. Ananda Gopal Saha is a retired Subedar from the Corps of Signals. The JCO retired from service on 29.02.04 after approximately 29 years of military service. The applicant during his service was detected with Primary Hypertension on 20.12.2001 for which he was placed in low medical category. Despite being placed in such low medical category, he continued to serve till he completed his colour service including 2 years of extension and finally retired on 29.02.2004 as per existing rules and terms and conditions.

2. The applicant, subsequent to his retirement, was awarded honorary rank of Sub Maj. At present, he is receiving the pension that is due to him as a Subedar without any disability pension.

3. While the applicant was being discharged, his Release Medical Board was held at MH Panaji (Goa) on 01.12.2003. In the said Medical Board (Annexure R – II of the Affidavit in opposition) his disability of Hypertension was not considered to be attributable or aggravated due to military service. Endorsement to this effect has been made by the Medical Board Authorities in Part V of the said proceedings. He was, however, considered to have suffered 30% disability for life.
4. Aggrieved by the denial of disability pension, the applicant did represent his case through the prescribed procedure of appeal before the authorities in the Army HQ and Ministry of Defence as part of 1st and 2nd appeals respectively. Both his appeals were rejected. The Defence Authorities in the Army HQ had held an Appeal Medical Board on 08.03.2010 at Base Hospital, Delhi Cantt, in response to his 2nd appeal. This Medical Board Proceedings have been filed as part of attachments to the application (Page 52). The applicant received a copy of this Board Proceedings alongwith an intimation that his 2nd appeal was rejected vide Signal Records letter No. R/JC-370620/DP-2/NER dated 25.08.2010.
5. Besides the ibid grievance for not receiving any disability pension, the applicant further felt aggrieved that his application for enrolment in Defence Security Corps was rejected because he was in low medical category.
6. The Id. Counsel for the applicant Shri Dilip Kumar Maiti submitted written note of arguments and emphasized in his oral submissions during hearing that the applicant has suffered immense monetary loss, firstly for being placed in low medical category and secondly for being denied disability pension. In order to further emphasize his point, he submitted that the applicant could have been promoted to higher ranks but his further extension in service was denied for being in low medical category.

7. Notwithstanding the above, the applicant has confined his prayer to the point that he should be allowed disability pension by considering his disablement (Hypertension) as aggravated due to military service. He submitted that he was quite fit and had rendered more than 16 years service in field area. Therefore, according to him, the stress and strain of service, especially on account of his nature of duty, did cause enough strains, which could have resulted in onset of hypertension. He prays that the ratio of certain decisions by various High Courts and Benches of the AFT may be considered while allowing the applicant disability pension by treating his medical disorder as aggravated/attributable due to military service. Such decisions are :-

- a) Bhanwar Lal Verma –vs- UOI & Ors, decided by the Jaipur Bench of AFT in Transferred Application No. 269 of 2010 dated 14.03.2001.
- b) Ex Cfn Sugna Rm Ranoliya –vs- UOI & Ors rendered by the Hon’ble High Court of Delhi in W.P. (c) No. 3699/2004 dated July 27, 2006.
- c) Sep Jai Singh vs Union of India and Ors reported in 119 (2005) DLT 66, 2005 (2) ESC 1355.
- d) Ex. Hav Bidhi Singh vs Union of India and Ors decided by the Hon’ble High Court of Delhi in W.P. © No. 12596/2004 dated 22.07.2008.
- e) Ex Hony. Capt Kirori Lal –vs- UOI & Ors, decided by the Hon’ble Delhi High Court in WP© 4449 of 2006 dt. 11.9.2008.

8. The respondents, while agreeing to the factual aspects of the application, vehemently opposed the prayer to allow the applicant any disability pension since the Medical Board on two occasions (Release Medical Board and Appeal Medical Board) have considered his disablement as neither attributable nor aggravated due to military service. The respondents in their affidavit in opposition have submitted that the Release Medical Board for the applicant was held on 01.12.2001 at MH Panaji (Goa). The JCO was physically examined by the Board which opined that the disability of “Primary

Hypertension" in his case was neither attributable nor aggravated due to military service. Accordingly, the applicant's claim for disability pension was rejected by PCDA (P).

9. The respondents further submitted that the applicant's appeal against non-grant of disability pension as submitted in Oct 2004, was considered by the 1st Appellate Committee at the level of Army HQ and rejected, which was communicated to him in Nov 2006 (Annexure -R - V II). Similarly the applicant's 2nd appeal of Mar 2009 was considered by the Defence Minister's Appellate Committee. For this purpose, an Appeal Medical Board was held at Base Hospital, Delhi Cantt. on 08.03.2010. This Medical Board also concurred with the opinion of Release Medical Board and also opined, after physically examining the applicant, that the disability in his case cannot be considered as attributable or aggravated due to military service. The Board Proceedings are annexed as R - X to the affidavit-in-opposition.

10. The respondents relied on Rule 173 of Pension Regulations wherein it is provided that disability pension can only be awarded in case such disability was attributable or aggravated due to military service. They have further clarified that the applicant retired in normal course as per his terms and conditions of service and was not boarded out on account of being in low medical category. He was not given 2 more years of extension and was denied re-employment in DSC because he was in low medical category. These decisions were purely in consonance with extant rules on the subject.

11. The Id. Advocate for the respondents Shri Anand Bhandari has quoted the ratio of the following judgments to support the action of the respondents :-

- a) Controller of Defence Accounts (Pension) and Others vs S Balachandran Nair {2005 (13) SCC 129}.
- b) Ministry of Defence vs A.V. Damodaran {(2009) 9 SCC}.

- c) Dilip Kumar Sharma vs Union of India & Ors. (T.A. No. 264 of 2009), Jaipur Bench of AFT dated 18.11.2010.

12. We have considered the arguments submitted by both sides and gone through the affidavits alongwith their annexures, as appended by both sides. We are of the view that the prayer of the applicant for allowing his disability pension would rest on two major points :-

- a) Was his disability of "Primary Hypertension" attributable to military service or otherwise?
- b) Applicability of the ratios of various judgements on the subject as quoted by the Id. Advocates from both sides.

13. It is very clear from the opinion of the Medical Authorities of the Medical Boards held on two occasions (Release Medical Board and Appeal Medical board) that the disability of the applicant was neither attributable nor aggravated due to military service. We find no reason to differ with the opinion of such Medical Boards, especially in view of many rulings on the subject delivered by the Hon'ble Apex Court from time to time, to the effect that the opinion of the Medical Boards should not be altered without sufficient reasons.

14. Be that as it may, we shall now consider the ratio of various judgments as quoted by the Id. Counsels from both sides.

- a) Judgements quoted by the learned advocate of the respondents.
 - i) AFT Jaipur judgement in the case of Bhanwar Lal Verma vs UOI (Supra).
In the ibid case, the Hon'ble AFT went on to agree with the opinion of Medical Board which had opined that the petitioners disability was attributable to military service. Accordingly, the petitioner was awarded disability pension, since such award was denied by PCDA. The ratio,

therefore, does not apply in the subject case. In fact the ibid judgement supports the arguments that "Opinion of the Medical Board should be abided by".

- ii) Ex Hony Capt Kirori Lal vs UOI (Supra) decided by Hon'ble Delhi High Court has no relevance to the present case since the cause of action and prayers are indifference to contents of the subject application.
 - iii) Delhi High Court Judgement in Sugnaram Ranoliya vs UOI (Supra). In the ibid case the disablement had onset in field/extreme cold climate in snow bound area. The facts and circumstances of the case are totally different and un-related to the present case. Therefore, ratio of this judgement is not relevant to this case.
 - iv) Jai Singh vs UOI (Supra); in the ibid case the type of disability and the conditions of its onset were different to the present case. The ratio of it has no relationship with the present case.
 - v) Bidi Singh vs UOI (Supra). This case relates to arbitration between disability pension and service elements of such pension. In case of injury sustained by the applicant. Therefore, ratio of this judgement will not have any bearing on the present case.
- b) The judgements as cited by the respondents: Hon'ble Apex Court judgement in CDA (P) vs S. Bal Chandran Nair (Supra). In the ibid case, the Ld. Judges upheld rejection of the disability pension and observed :-

“We have already referred to the opinion of the Medical Board which found the two disabilities from which the respondent was suffering were not attributable to or aggravated by military service. Clearly therefore, the opinion of the Medical Board ruled out the applicability of Regulation 53 to the case of respondent. The diseases from which he was suffering were not found to be attributable to or aggravated by military service, and were in the nature of constitutional diseases. Such being the opinion of the Medical Board, in our view the respondent can derive no benefit from Regulation 53. The opinion of the Medical Board has not been assailed in this proceedings and therefore, must be accepted.”

- c) Apex Court judgement in Ministry of Defence vs A.V . Damodaran (Supra), in the ibid judgement the Apex Court while setting aside judgment of the High Court is inter-alia held that :-

“Another relevant factor which is required to be noted is that the report of the Medical Board is not under challenge. As has been held by this Court, such opinion of the Medical Board would have the primacy and therefore, it must be held that the learned Single Judge and Division Bench of the High Court were not justified in allowing the claim of the respondent.”

- d) AFT Jaipur Bench judgement in Dilip Kumar Sharma vs UOI (Supra). The ibid judgement, while relying on related judgements of the Apex Court has held that opinions of the Medical Boards cannot be replaced or substituted unless circumstances compel to take contrary review . The ratio of this judgement further strengthens the view of the opinion of the Medical Board should not normally be challenged.

15. We have considered the facts in the light of the documents annexed and the contents of the two Medical Boards on the subject and ratios of various Apex Court decisions. We are of the opinion that the applicant has not brought out any other peculiar circumstances that would compel us to differ with the judgements with regard to the Medical Board in this case. While arriving at a conclusion, we

have also considered the details of physical service rendered by the applicant, as submitted by the applicant in Annexure A – 1 to the application.

16. We are of the view that the applicant had a normal tenure of military service as would any other defence person of the Corps of Signals would have undergone. There has been no special or traumatic conditions of service that were brought before us. Therefore, the onset of his disability (Primary Hypertension) was indeed in peace station in routine circumstances.

17. In view of the circumstances as mentioned above the application stands dismissed being devoid of any merit, without any cost.

18. Let a plain copy of this order be handed over to the learned Advocates for both the sides.



(LT GEN K.P.D. SAMANTA)

MEMBER (ADMINISTRATIVE)



(JUSTICE SADHAN KUMAR GUPTA)

MEMBER (JUDICIAL)