
Commander Rakesh Pande Vs Union Of India & Ors

Civil Appeal No(S). 5970 Of 2019

Court: Supreme Court Of India

Date of Decision: Nov. 28, 2019

Hon'ble Judges: L. Nageswara Rao, J; Hemant Gupta, J

Bench: Division Bench

Advocate: Sukhjinder Singh, Alok Gupta, Madhavi Diwan, Praveena Gautam, Jitendra Kumar Tripathi, Nidhi Khanna, Arvind Kumar Sharma

Final Decision: Allowed

Judgement

The appellant was commissioned into the Executive Branch of the Indian Navy on 01.01.1981 and took premature retirement from Naval Services

after completing 20 years of service on 30.04.2001. He was found to be suffering from Non-Insulin Dependent Diabetes Mellitus(NIDDM) and

Hyperlipidaemia when he was posted as Chief Staff Officer(Personnel, Administration & Logistics) at Goa Naval Area in November, 1998. He was

downgraded medically to SHAPE 2 (S2A2) and thereafter to SHAPE 3 (S3A2) on 29.02.2000.

At the time of his retirement, the Release Medical Board (RMB) assessed his degree of disablement @ 20% for NIDDM and 6-10% for

Hyperlipidaemia for a period of 5 years. The appellant was not granted disability pension as his medical disability was assessed as neither attributable

to nor aggravated by military service.

The request made by the appellant for disability pension was rejected by an order dated 12.07.2016, aggrieved by which he approached the Armed

Forces Tribunal, Principal Bench, New Delhi. It was contended on behalf of the appellant before the Tribunal that he was entitled for the disability

pension inspite of his premature retirement. The Tribunal held in his favour and found him entitled for disability pension at 20% for 5 years w.e.f.

1.5.2001 which was broad banded to 50% in light of the judgment of this Court in Union of India & Ors. vs. Ram Avtar (Civil Appeal No.418 of

2012). The contention of the appellant that the disability should be purported to be for life was not accepted by the Tribunal.

The learned counsel for the appellant referred to a letter dated 07.02.2001 of the Government of India which dealt with the modalities for

implementation of the recommendations of the 5th Central Pay Commission. The assessment with regard to percentage of disability as recommended

by the Release Medical Board was dealt with in the said letter. The assessment made by the Medical Board shall be treated for life except in case of

disability which is not of a permanent nature, unless the individual requests for a review.

Ms. Praveena Gautam, learned counsel appearing for the Union of India relied upon para 7 of the said letter which refers to reassessment of

disability. She also relied upon a judgment of this Court in NO.14666828M EX CFN Narsingh Yadav Vs. Union Of India And Ors. [2019 (9) SCC

667] to submit that each case has to be examined on its own merits.

Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of

disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual himself

requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which

cannot be restricted for a period of 5 years. The judgment cited by Ms.Praveena Gautam, learned counsel is not relevant and not applicable to the

facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @ 50% for life.

Pending application, if any, stand disposed of.