

**(20) 06 AFT CK 0023**

**Armed Forces Tribunal Principal Bench, New Delhi**

**Case No:** Original Application No. 979 Of 2018

Darshan Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

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**Date of Decision:** June 19, 0020

**Hon'ble Judges:** Sunita Gupta, J; B.B.P. Sinha, Member (A)

**Bench:** Division Bench

**Advocate:** R.K. Tripathi, Rajesh Kumar Das

**Final Decision:** Disposed Of

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### **Judgement**

1. The applicant, Lt Col Darshan Singh (Retd.), through the medium of the instant Original Application is seeking the following reliefs:

(i) To call for the records of all the Medical Board proceedings for your Lordships' perusal.

(ii) to set aside the orders of the Adjutant General issued vide their letter number 12681/IC-32006/T-8/MP5(b) dated 25 July 201, Annexure A1.

(iii) To direct the Respondents to pay the Applicant the disability pension at the rate of 50% for life in view of Hon'ble Supreme Court Judgment in

Dharambir Singh Vs Union of India read with Union of India Vs Rajbir Singh and Union of India Vs Ram Avtar Civil Appeal No 418/2012 dated

10.12.2014 with effect from the date of his retirement, that is, 31 Aug 1997, in terms of Hon'ble Supreme Court order in Davinder Singh vs U O &

Ors, Civil Appeal No 9946 of 2016, dated 20 September 2016.

(iv) To direct the Respondents to pay the Arrears of Disability Pension with 18% interest with effect from the next day of release of the Applicant.

2. Briefly stated facts of the case are that the applicant was commissioned in Indian Army on 10.06.1978 and was discharged on 31.08.1997 in Low Medical Category after attaining the age of superannuation. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Kota (Rajasthan) on 05.04.1997 assessed his disability 'ESSENTIAL PRIMARY HYPERTENSION 401, V-67' as 20% for two years. The RMB opined the first disability i.e. 'ESSENTIAL PRIMARY HYPERTENSION 401, V-67' to be aggravated by military service. The initial claim of disability pension was rejected by the Army Headquarters. The applicant's petition dated 20.02.2004 was rejected by the respondent vide their letter dated 11.05.2006. The applicant's another petition dated 12.07.2016 was also rejected by the respondents vide their letter dated 25.07.2016. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that at the time of commission, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of commission in Army. The disease of the applicant was contracted during the service, hence is conceded as aggravated by RMB. He submitted that the act of overruling the recommendations of RMB by higher competent authority was wrong and should be set aside. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension as 20% and its rounding off to 50%,

4. On the other hand, Ld. Counsel for the respondents contended that first disability of the applicant i.e. 'ESSENTIAL PRIMARY HYPERTENSION 401, V-67' has been regarded as 20% for two years by RMB as aggravated by military service. However, Army Headquarters as Competent Authority has overruled the opinion of the RMB and has rejected the claim of the applicant. Hence, the disability is to be deemed as NANA. 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 proceedings and noted

that the RMB had opined the disability to be Aggravated to service. The question which needs to be answered is straight and simple i.e. whether the

Army Headquarters has power to overrule the opinion of an RMB without conducting another Higher Medical Board?

6. This is a case where the RMB had conceded the disease i.e. 'ESSENTIAL PRIMARY HYPERTENSION 401, V-67' of the applicant as

aggravated by Military Service. The Army Headquarters has overruled the opinion of the RMB and declared that the disability of the applicant is

NANA. However, the law on overruling the opinion of a Medical Board is no more RES INTEGRA. The law on this issue has been settled by

Hon'ble Court. The Hon'ble Apex Court has made it very clear that the opinion of the Medical Board cannot be overruled by higher chain of

command without physical medical examination of the patient by a higher Medical Board. In this context the operative portion of the judgment of

Hon'ble 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 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 above we set aside the decision of Army Headquarters for rejecting the claim of the applicant for grant of disability pension and are of

the considered opinion that the applicant was entitled to disability pension for disease i.e. 'ESSENTIAL PRIMARY HYPERTENSION 401, V-67'

Â©20% for two years from the date of discharge.

8. The disability 'ESSENTIAL PRIMARY HYPERTENSION 401, V-67' has been recommended by the Medical Board, in its wisdom, for two years

only. Therefore, as per Ministry of Defence letter No. 1(2)/97/D (Pen-C) dated 31.01.2001, para 10, a fresh RSMB for life will have to be conducted

by the respondents. In this connection we are of the opinion that a Medical Board is the best agency to take a call on the duration after which the

disease needs review. Additionally, the opinion of Medical Board and the percentages of disability in the Medical Board have direct correlation with

financial benefits accruing out of a disability, hence, it is important that Medical Board reaches a final opinion. The respect for expertise of a Medical

Board has been clarified by Hon'ble Supreme Court in its judgment dated 03.10.2019 in Civil Appeal No 7672 of 2019 in Ex Cfn Narsingh Yadav vs

Union of India & Ors. Decided on 03.10.2019. Relevant part of the aforesaid judgment is as given below:-

21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless

there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical

Board.

9. In view of the above, the Original Application No. 979 of 2018 deserves to be partly allowed, hence, partly allowed. The impugned order dated

25.07.2016, enclosed at Annexure A-1 of the Original Application, is set aside. The disability of the applicant 'ESSENTIAL PRIMARY

HYPERTENSION 401, V-67' is to be considered as aggravated by military service. Since, the applicant's RMB was valid for only two years w.e.f.

31.08.1997 and the applicant has approached this Tribunal after a huge delay, hence, in view of decision of the Hon'ble Supreme Court in Union of

India Vs. Tarsem Singh, reported in 2009 (1) AISLI 371 with regard to law of limitation, the applicant is not entitled for the arrears of disability

element for these two years period after discharge. His future entitlement to disability element is subject to the outcome of this RSMB. The

respondents are directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element in terms of

Para 7 of Government Letter dated 07.02.2001 on conduct of Medical Board. Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order.

10. No order as to costs.

11. Pending application(s), if any, also stand disposed of.

Pronounced in the open court on 19th June 2020.