

2025:PHHC:003665-DB



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-34968-2024

Reserved on: 20.12.2024

Pronounced on: 14.01.2025

UNION OF INDIA AND ORS.

.....Petitioners

Versus

Ex. Nb Sub. SHER SINGH AND ANR.

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Ms. Promila Nain, Advocate,
for the petitioners/UOI.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein-Union of India, prays for the setting aside of the order dated 24.09.2019 (Annexure P-1), as passed by the learned Armed Forces Tribunal concerned, whereby the claim of respondent No. 1 for the grant of disability pension was allowed.

Factual Background

2. Respondent No. 1 joined Army on 18.11.1980 and was discharged from service on 30.11.2006. At the time of discharge, respondent No. 1 was in low medical category on account of disability “SNHL Both ear H90-3”. The release medical board though considered his disability as aggravated by rendition of military service but assessed the same as less than 20 % (15 to 19 %) for life. Therefore, his claim for grant of disability pension was rejected.

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3. Respondent No. 1 preferred an appeal against the rejection of his claim for grant of disability pension, however the same was rejected by the competent authority vide letter dated 20.11.2007.

4. Thereafter, respondent No. 1 preferred 2nd appeal against the rejection of his claim for grant of disability pension. Moreover, appeal medical board of respondent No. 1 was carried out at Base Hospital Delhi Cantt on 08.12.2014. The board recommended the appeal for acceptance. However, the competent authority vide letter dated 10.08.2016 rejected the second appeal preferred by respondent No. 1. The relevant part of the order, as passed by the Second Appellate Committee on the appeal (supra), is extracted hereinafter.

*“Perusal of the enclosed medical and service documents reveals that the onset of the ID was in May, 2003 in Kota (peace) the Indl was detected to be suffering from SNHL during his PME. Following onset the Indl served in Cl. Ops in Batalik (J & K) SNHL and sensor neural hearing loss in conceded as attributable to service in case of service related trauma or infection. However, those working in close proximity of gun fire (small arms grenade, arty guns, bomb blast and tanks) and in constant exposure to blast of loud noise such as working with aero engines, riveters, factory workers run the risk of noise induced SNHL in the instant case there is no evidence of service related trauma or infection. However, the Indl is an infantry soldier GD and has been exposed to the loud noise of gunfire small arms firing and blasts etc. on numerous occasions during his service. Hence, the Id is conceded as aggravated service in terms of Para 23, Chap VI GMO 2002. Amdt 2008. **The board recommended a disablement of 20 % Chap VI GMO 2002. Amdt. 2008 and have recommended the appeal for acceptance.** However, MoD (Finance) has rejected the 2nd appeal on the ground that the AMB has not recorded on any reasons based on medical parameters. The ID therefore, merits being conceded as neither attributable to nor attributable by military service.*

5. Feeling aggrieved, respondent No. 1 filed O.A., before the learned Armed Forces Tribunal concerned, wherebys he cast a challenge to the afore said rejection order. The said O.A., became

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allowed vide order dated 24.09.2019. The operative part of the said order is extracted hereinafter.

“ In the circumstances, we dispose of this Original Application with a direction to the respondents to process applicant’s claim for disability pension in terms of the aforesaid judgments and if required by invoking the provisions of Ministry of Defence letter No.16(a) 2009. D(Pen/Pol) dated 10.11.2010 in case the disability was not assessed as permanent and for life, and release it together with benefits as per the above pronouncements to the applicant, subject to verification, as expeditiously as possible but not later than four months from the date of receipt of certified copy of this order by learned Government counsel/OIC Legal Cell. While doing so respondents shall also keep in mind the judgment of the 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.”

6. Feeling aggrieved from the aforesaid order as passed upon the O.A. (supra), by the learned Armed Forces Tribunal concerned, the petitioner-Union of India has filed thereagainst the instant writ petition before this Court.

Inferences of this Court.

7. In the instant case, a perusal of the records reveal that the Appeal medical board regarded the disability of respondent No. 1 as 'aggravated by military service' besides assessed the same @ 20 % for life. However, the Mod (Finance) **interfered with** the said opinion and the second appeal filed by respondent No. 1 became rejected thus on

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the ground that the Appeal Medical Board has not recorded any reasons based on medical parameters.

8. It is extremely alarming that though the opinion of the medical board, thus evidently falls within the domain of an expert opinion, wherebys, it may be impermissible to be reviewed. Moreover, when therebys an indefeasible right became vested in respondent No. 1, to claim the fullest complement of the disability pension. However, again and that too enigmatically, the apposite expert opinion was discarded. Contrarily, the opinion of the MoD (Finance) was accepted, wherebys, he declared that the disability entailed upon the present respondent was neither attributable to nor aggravated by military service. The acceptance of the opinion of the MoD (Finance) when he is not shown to be an expert, whereas, the expert opinion rather was the opinion of the appeal medical board, which declared the disability of the present respondent no.1 to become aggravated by rendition of military service, wherebys, he became conferred with an indefeasible right to receive the fullest complement of the disability pension. Therefore, in the petitioner, accepting an unacceptable review by the MoD (Finance), of the otherwise reverearable opinion, as became formed by the appeal medical board concerned, thus tantamounts to a gross illegality.

9. In consequence, this Court finds no reason to interfere with the impugned order, as passed by the Tribunal concerned.

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10. The writ petition with observation(s) aforesaid is dismissed accordingly.
11. Since the main case itself has been decided, thus, all the pending application(s), if any.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

14.01.2025

dinesh/kavneet singh

Whether speaking/reasoned

Whether reportable

:

Yes/No

:

Yes/No