

VERDICTUM.IN

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 420 OF 2020

EX L/NK RAJPUT AJIT SINGH

.....Appellant(s)

Vs.

UNION OF INDIA & ORS.

.....Respondent(s)

O R D E R

The appellant is aggrieved by the impugned order to the extent that it upheld the re-assessment by the Medical Board which stated that he was entitled to disability pension at hundred percent but at the same time confined it to one year.

The record reveals that the appellant had served the Indian Army for 15 years till 1987 when he was discharged from service. His services, in terms of the record produced by the respondents, were exemplary. He experienced cardiac discomfort and he was placed under the permanent low medical category with the remark "complete heart block - 4 to 6" which qualified for treatment as a hundred percent disability.

His claim for re-assessment of the disability element of his pension was considered. This culminated in an order dated 21.10.1998. Subsequently, he was operated upon, and a pacemaker was implanted. He sought for re-assessment of his disability which was declined on 17.07.2018. Being aggrieved, he approached the Armed Forces Appellate Tribunal (hereinafter referred to as "AFT" which applied the law which was declared by this Court in

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[Dharamvir Singh v. Union of India & Ors.] (2013) 7 SCC 316 and subsequent judgments. It was held that the rejection of his claim for disability pension was not justified. The Armed Forces Appellate Tribunal, however, held though he was entitled to a disability pension it was only for one year.

It is pointed out by Ms. Mathew, learned counsel appearing for the appellant that the AFT granted relief but fell into error in confining it to one year given that the disability assessment categorized it to be permanent. It was submitted that the Board appeared to have been prejudiced by the fact that at the relevant time, the appellant refused surgery because it was of a life-threatening nature.

Ms. Bhati, the Additional Solicitor General (ASG) for the respondent - Union of India highlighted the contents of the medical assessment which was fair. Particularly attention of the Court was drawn to the fact that the disability was not attributable to the appellant's misconduct or negligence and at the same time recorded that he was unwilling to undergo surgery. According to the Board if he had undergone surgery there were significant chances of the diminution of the disability.

It appears that the Medical Board which assessed the appellant clearly was of the opinion that there was no negligence on the part of the individual and the record was shown to the exemplary. The only prejudicial factor that weighed with the Board, in forming the opinion that the disability was not attributable to service was his unwillingness to undergo surgery. At the same time, the record also speaks of the fact that the

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appellant's permanent disablement was the cause of his discharge. Given all these factors, the Armed Forces Appellate Tribunal's decision to confine the disability benefit to one year does not appear logical.

Rule 185 of the Pension Regulations for the Army-1961 which was relied upon by the appellant reads as follows:

"185. (a) If the disability is certified on the basis of an invaliding or resurvey medical board to be incapable of improvement disability pension shall be granted for a period of 10 years in the first instance. During this period the pensioner will have a right to claim re-assessment of his pension on the basis of aggravation, if any. Where the disability pension is modified as a result of reassessment, the pension shall again be granted for a period of 10 years from the date of the revised award provided the disability is still regarded as incapable of improvement. Each successive assessment at higher or lower rates will be for a 10 years period during which the pensioner will be given an opportunity to have his pension reassessed on the basis of further aggravation.

(b) When the percentage of disablement has remained unmodified for a period of 10 years, the pensioner shall be brought before Re-survey Medical Board at the end of ten years and in the event of the disability still being regarded by the pension sanctioning authority as incapable of improvement; his pension shall be sanctioned for life. Thereafter, no revision of pension will be admissible.

(c) In cases where the invaliding disability is loss of limb(s), total loss of sight, loss of one eye, amputation, etc., and where the question of improvement/worsening of its physical condition do not arise, the award shall be sanctioned for life in the first instance itself."

In the present case, the Armed Forces Appellate Tribunal was either not cognizant of or chose not to give any reasons in support of departing from the norm indicated in Rule 185.

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For the above reasons the impugned order to the extent it confines the grant of disability, element of the appellant's pension to one year is hereby set aside. In the peculiar facts and circumstances of this case, the disability pension shall be disbursed to the appellant in terms of Rule 185 for the period of 10 years after which re-assessment may be appropriately conducted in accordance with the rules.

The calculation of disability pension arrears and payments on the basis of this Judgment shall be confined to three years before the time he approached the Tribunal, till date and for the relevant future period.

The appeal is allowed in the above terms.

.....J.
(S. RAVINDRA BHAT)

.....J.
(ARAVIND KUMAR)

New Delhi;
September 12, 2023.

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ITEM NO.24

COURT NO.8

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 420/2020

EX L/NK RAJPUT AJIT SINGH

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 12-09-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE ARAVIND KUMAR

For Appellant(s) Ms. Liz Mathew, AOR
Ms. Mallika Agarwal, Adv.
Mr. Nisarg Bhardwaj, Adv.

For Respondent(s) Mrs. Aishwarya Bhati, A.S.G.
Mr. R Bala, Adv.
Mr. Anmol Chandan, Adv.
Mr. Saransh Kumar, Adv.
Ms. Ameyavikrama Thanvi, Adv.
Mr. Arvind Kumar Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of signed order.

All pending applications are disposed of.

(NEETA SAPRA)
COURT MASTER (SH)

(Signed order is placed on the file)

(BEENA JOLLY)
COURT MASTER (NSH)