

(20) 06 AFT CK 0017

In the Armed Forces Tribunal

Case No : Original Application No. 760 Of 2018, Miscellaneous Application No. 625 Of 2018

Alok Kumar Dwivedi

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 19-06-20

Acts Referred:

Citation : (20) 06 AFT CK 0017

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

Bench : Division Bench

Advocate : Praveen Kumar, Arvind Patel

Final Decision : Disposed Of

Judgement

MA. No. 625/2018

1. For the reasons carved out in the Application, the delay of 914 days in filing the Original Application is hereby condoned.

M.A. stands disposed off.

O.A. No. 760/2018

Aggrieved by the order of denial for grant of disability pension, the applicant has filed the instant O.A seeking the following reliefs:

(a) Quash and set aside the impugned letters dated 01 Aug 2017.

(b) Direct Respondents to grant disability pension @ 36% and rounding off the same to @ 50% for life as recommended by RMB to the applicant

with effect from 01 Oct 2015 i.e the date of discharge from service with interest @ 12% p.a. till final payment is made.

(c) Any other relief which the Honible Tribunal may deem fit and proper in the fact and circumstances of the case.

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Navy on 09.09.1993 and retired from service on 30.09.2015 in low

medical category after rendering more than 20 years of service. The Release Medical Board (RMB) held at Goa on 09.07.2015, assessed his disabilities

(i) 'TYPE II DIABETES MELLITUS ICD No. E-11' @ 20% for life and (ii) 'SEIZURE DISORDER (GENERALIZED + COMPLEX PARTIAL

SEIZURE) ICD 40.3,Z 09.0' @ 20 %for life, composite assessment for both the disabilities was @ 36% for life. However, the RMB opined that both

the disabilities of the applicant were neither attributable to nor aggravated by military service (NANA). The applicant's claim for grant of disability

pension was rejected by the respondents vide order dated 01.08.2017. Hence the instant Original Application.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in the service and any disability not recorded

at the time of enrolment should be presumed to have been caused subsequently. The action of the respondents in not granting disability pension to the

applicant is illegal. In this regard, he relied on the decision of the Hon'ble Supreme Court in Dharamvir Singh v. Union of India and others, (2013) 7

SCC 316 and submitted that for the purpose of determining attributability of the disease to military service, what is material is whether the disability

was detected during the initial recruitment medical tests and if no disability was detected at that time, then it is to be presumed that the disability arose

while in service, therefore, the disabilities of the applicant are to be considered as aggravated by service and he is entitled to get disability pension @

36% for life and the same is to be rounded off to 50% for life.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that though the RMB had assessed both the

disabilities of the applicant composite @ 36% for life, it opined that both the disabilities are NANA. As such his claim for disability pension has rightly

been rejected by the respondents under the provisions of Regulation 101 of Navy Pension Regulation 1964. He submitted that the instant Original

Application does not have any merit and the same is to be dismissed.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board

proceedings as well as the records. The question which needs to be answered is

straight and simple i.e. Whether the disabilities of the applicant are attributable to or aggravated by Military Service?

6. After going through the opinion of RMB, we have noted that the second disability i.e. 'SEIZURE DISORDER (GENERALIZED + COMPLEX

PARTIAL SEIZURE)' has been opined as NANA by the RMB. As per opinion of Surg Lt Cdr Vineet Behera, Graded Specialist medicine, INHS

Jeevanti dated 20.03.2015, "36 years, serving Sailor was detected to have generalized seizure and CPS since 2007, with history of episodes in

childhood. He is on medication and had last seizure on 08 June 2012. He was detected to have diabetes in 2014 and is on treatment for same." Hence,

we are of the opinion that benefit of doubt in this disease cannot be given to the applicant and we agree with RMB opinion that this disease is NANA.

As far as first disability i.e. 'TYPE II DIABETES MELLITUS' is concerned, we have noticed that the only reason for declaring the disease as

NANA is that it has originated in peace area. However, on further scrutiny, we have observed that this disability was initially detected in about 19

years of service. We are therefore of the considered opinion that the reasons given in RMB for declaring disease as NANA is very brief and cryptic

in nature and do not adequately explain the denial of attributability. We don't agree with the view that there is no stress and strain of service in military

stations located in peace areas. Hence, we are inclined to give benefit of doubt in favour of the applicant. Thus we are of the considered opinion that

first disability i.e. 'TYPE II DIABETES MELLITUS' @ 20% for life is to be considered as aggravated by military service in line with the law settled

on this matter by the Hon'ble Apex Court in the case of Dharamvir Singh (supra),

7. Additionally, the applicant will also be eligible for the benefit of rounding off of first disability from 20% to 50% for life in terms of the decision of

Hon'ble Supreme Court in Union of India and others v. Ram Avtar (Civil Appeal No 418 of 2012 dated 10.12.2014).

8. Resultantly, the O.A. deserves to be partly allowed, hence partly allowed. The impugned order is set aside. The applicant's disability 'TYPE II

DIABETES MELLITUS' @ 20% for life, is to be considered as aggravated by military service and his disability element of pension is to be rounded

off from 20% to 50% for life from the date of his retirement i.e. 01.10.2015. Ordered accordingly. To be implemented by the respondents within four

months from the date of receipt of a copy of this order. Default will invite interest @ 6% per annum.

9. No order as to costs.

10. Pending application(s), if any, also stand disposed off.

Pronounced in the open Court on 19th June 2020.