

(2019) 08 AFT CK 0029

In the Armed Forces Tribunal

Case No : Original Application No. 1929 Of 2018, Miscellaneous Application No. 2136 Of 2018, 1955 Of 2019

Anand Kishor Ojha

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Citation : (2019) 08 AFT CK 0029

Hon'ble Judges : Sunita Gupta, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : V.S. Kadian, K.K. Tyagi

Final Decision : Allowed

Judgement

MA 1955/2019

1. Vide this MA, the respondents seek condonation of delay in filing the counter affidavit. In view of the averments made in the application, delay in

filing counter affidavit is condoned. Same is taken on record.

MA stands disposed off.

MA 2136/2018

Vide this MA, the respondents seek condonation of delay of 281 days in filing the Original Application. In view of the averments made in the

application, delay in filing OA is condoned. Same is taken on record.

MA stands disposed off.

OA 1929/2018

Arguments heard.

Vide separate order, OA stands disposed off.

Heard learned counsel for the parties.

2. Challenge in this OA is to the order dated 19th January 2018 vide which the second appeal preferred by the applicant was rejected.

3. The facts germane to the filing of present OA are that the applicant was enrolled in the Air Force on 14.08.1976 and retired from service on

31.01.2016. At the time of his retirement, he was brought before duly constituted Release Medical Board, which viewed his disability i.e. Chronic

Atrial Fibrillation ICD: 149.9 and assessed the same as 40% life long.

4. However, the applicant was not granted Disability Element of Pension because the disability was not found attributable to nor aggravated by

service. The first appeal and the second appeal preferred by the applicant were rejected. Thereupon, the applicant filed the present OA claiming

Disability Element of Pension along with interest @ 12% per annum.

5. Learned counsel for the respondents, however, submitted that since the disability is neither attributable to nor aggravated by service, as such the

applicant is not entitled for the relief.

6. According to the applicant, the relief sought by him in the instant matter is squarely covered by a catena of decisions of the Honble Supreme Court

including Dharamvir Singh Vs. Union of India (2013) 7 SCC 31,6 Union of India Vs. Chandrapal, Upton of India vs. Rajvir Singh (2015) 12 SCC 26,4

Union of India vs. Angad Singh Titaria (2015) 12 SCC 257 ,Union of India vs. Manjeet Singh (2015) 12 SCC 275, Ex Hay Maniram Bharia vs. Union

of India, Sattvinder Singh vs. Union of India, Ex Gnr Laxmanram Poonia vs. Union of India (2017) 4 SCC 69.7 According to the applicant, his claim

for disability pension is also supported by the applicable rules.

7. On the other hand, learned counsel for the respondents has contended that the claim put-forth by the applicant has been found to be 'Neither

Attributable to, Nor Aggravated by Military Service' by the Medical Board and, hence, he is not entitled to disability pension for the above disability,

since the opinion of the Medical Board, being an expert body, must be respected.

8. We have considered the submissions advanced by the learned counsel for both the parties in the light of the relevant rules and the judgment of the

Honble Supreme Court rendered in Dharamvir Singh's case (supra), which has been followed in subsequent decisions of the Honble Supreme Court.

In Dharamuir Singh's case, it has, inter alia, been held as under:

1. The question whether a disability is attributable or aggravated by military service is to be determined under "Entitlement Rules for Casualty

Pensionary Awards, 1982".

II. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In

the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service.

III. If no note of any disability or disease was made at the time of individual's acceptance be deemed to have arisen in the service.

IV. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease

will not be deemed to have arisen during service, the medical board is required to state the reasons.

9. The matter for implementation of orders of Hon'ble Supreme Court/AFTs in respect of armed forces personnel in NANA cases was taken up with

the Department of Expenditure, Ministry of Finance for consideration. Department of Expenditure had agreed to implement those orders, in fact,

Govt. of India, MoD letter F.No. 4(17)2015/D (Pen/Legal) dated 29.06.2017 was also sent to the Chief of Staff of Army, Navy and Air Force for

implementation of the judgment of Hon'ble Supreme Court in respect of Armed Forces Personnel in "NANA" (Neither Attributable to nor Aggravated

by military service) cases. However, no action was taken pursuant to this letter by the competent authority.

10. In fact, the Committee of Experts constituted by the Hon'ble Raksha Mantri while looking into the solutions for reducing litigations concerning the

Ministry of Defence and to put in place an efficient mechanism of redressal of grievances related to service and pension matters, inter alia,

recommended as follows:

Expert committee has recommended that whenever a legal principle is settled by a High Court or the Supreme Court, the same must be universally

applied to all similarly placed employees or at least on individual representations after examining the same, rather than forcing them into individual

litigation.

In this regard, attention is drawn to D(CMU) 's ID No. 7(9)12018/ D(CMU) dated

26.06.2018 (copy enclosed). However, it is proposed that each case may be decided on its merit, subject to consultation with Department of Expenditure and DOP&T having regard to financial implications.

11. It is undisputed case of the parties that when the applicant entered into the military service, he was not suffering from the above disability, which leaves no manner of doubt that the disability accrued to him during the course of Military Service. Hence, following the principles laid down in Dharamvir Singh (supra), it is apparent that the disability is attributable or aggravated by Military Service.

12. In view of the aforesaid judicial pronouncements and the parameters referred above, the applicant is entitled for Disability Element of Pension.

Therefore, OA is allowed and the applicant is granted Disability Element of Pension for disability i.e. Chronic Atrial Fibrillation ICD: 149.9 @ 40% for

life which is to be rounded off to 50% from 1st February 2016 in view of the Govt. of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated

31.01.2001 and the judicial pronouncement of the Honble Supreme Court in the case of Union of India Vs, Ram Avtar (Civil Appeal No. 418/2012) decided on 10.12.2014.

13. The respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of this order, failing which, applicant shall be entitled to interest @ 8% per annum till the date of payment.

14. No order as to costs.