
(2019) 10 AFT CK 0026

In the Armed Forces Tribunal

Case No : Original Application No. 358 Of 2016

Anuja Kumar Nayak

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0026

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

Bench : Division Bench

Advocate : Anil Srivastava, S.D. Windlesh

Final Decision : Allowed

Judgement

1. The applicant, Ex Hay (C1k) Anuja Kumar Nayak, through the medium of the instant O.A, is seeking the following reliefs:

- (a) Set aside the impugned order dated 07.01.2015 being arbitrary and illegal;
- (b) Direct the respondents to pay disability pension @ 20% duly rounded off @ 50% with effect from the date of his invalidation/discharge along with 12% interest on the arrears thereof; and
- (c) The applicant be awarded cost of the litigation @ Rs, 50,000/-.

2. The factual matrix of the case is that the applicant was enrolled in the Army on 27.03.1989 and was invalided out from service on 31.05.2011. At

the time of joining the Army, the applicant was medically examined and found fit in all respects. In course of time, he was promoted to the rank of

Havildar. Due to low medical category, the applicant was invalided out from service with effect from 31.05,2011. The RMB assessed his disability

Depressive Episode Severe (F-32.2) @ 20% for life and opined it to be neither attributable to nor aggravated by military service (NANA). Though

the applicant was granted service pension, no disability pension was granted. His claim for disability pension was rejected vide letter dated 07.05.2011,

against which the applicant filed a first appeal. The IHQ of MoD (Army) ordered an Appeal Medical Board (AMB). The AMB opined his disability as

Aggravated by military service @ 40% for life. However, higher competent authority rejected the claim of the applicant by overruling the opinion of

AMB. Finally, the first appeal filed by the applicant was rejected vide letter dated 14.10.2014. Against the rejection of the said first appeal, the

applicant filed a second appeal. His second appeal was also rejected, Being aggrieved, the present O.A is filed.

3. Learned counsel for the applicant pointed out that at the time when the applicant joined the Army, he was medically examined and found to be in

Shape-I and the disability was contracted after 16 years, in November 2006, which resulted in the downgrading of his medical category to 52(P) in

September 2007. The rejection of the claim of the applicant for disability pension on the ground that there is no causal association of onset of ID with

service is incorrect, therefore, conceding the ID as neither attributable to nor aggravated by military service cannot be justified. Learned counsel also

contended that the case of the applicant is squarely covered by the decision of the Honble Supreme Court in Dharainvir Singh v. Union of India and

others (2013) 7 SCC 316 and, therefore, the applicant is entitled to disability pension.

4. Per contra, the learned counsel for the respondents submitted that the disability of the applicant had originated in peace area and had rightly been

opined as NANA by the RN1B and the higher competent authority. Hence his claim for disability pension has rightly been rejected. He pleaded for

the O.A to be dismissed.

5. Having heard the learned counsel for the parties and perused the records, the questions that fall for our consideration is as to whether the disability

of the applicant is attributable to or aggravated by military service?

6. We have noticed that the applicant has been discharged after 22 years of service due to low medical category on recommendations of the Release

Medical Board (RMB). We have also noticed that the only reason for denial of attributability to military service is the fact that the disease had

originated in peace area. However, we have also noticed that a few months

before the onset of the disease in peace area, the applicant was posted in a field area in & K State. A perusal of the medical documents of the applicant clearly indicate that on his first appeal, an AlviB was conducted in 2012 at Base Hospital, Delhi. In this Appeal Board, the disability of the applicant has been conceded as 'aggravated' by the AMB on the ground that this disease started within a few months of coming out of a field posting. However, it appears that the opinion of the Apoeal Medical Board consisting of one Brigadier and two Colonels has been overruled by the Adjutant General Branch at Army HQs without fresh medical examination by another Medical Board, vide their letter date 14.10.2014.

7. The law on overruling of the opinion of a Medical Board has been well settled by the lionible Supreme Court in the case of Ex Sapper Aloiiinder Singh v, Union of India and others (Civil Appeal No 104 of 1993 decided on 14.01,1993), Hence, in the light of this judgment, we set aside the impugned orders of the Adjutant General Branch and agree with the opinion of the AN1B, whereby the disability of the applicant ""Depressive Episode Severe (F-32.2)IV 40% for life has been opined as 'aggravated by militant service.

8. In view of the above, the O.A is partly allowed. The disability of the applicant ""Depressive Episode Severe (F-32.2)"" Â© 40% for life is to be considered as aggravated by military service and his disability element of pension is to be rounded off from 40% to 50% for life. Considering the fact that the O.A has been admitted after condoning the delay and laches, therefore, in view of the decision of the Flonibe Supreme Court in Shiv Dass vs. Union of India and others (2007 (3) SLR 445), the arrears will be restricted up to a period of three years preceding the date of filing of the O.A. The date of filing of this O.A is 15.03.2016. Ordered accordingly. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest Â© 8% per annum till actual payment,

9. No order as to costs