
(2020) 03 AFT CK 0035

In the Armed Forces Tribunal

Case No : Original Application No. 15 Of 2018

Battula Dharma Raju

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 05-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0035

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

Bench : Division Bench

Advocate : Aditya Singh Puar, V.S. Tomar

Final Decision : Disposed Of

Judgement

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

(i) Petitioner, hence, prays for grant of disability pension in accordance with the applicable Rules and as held by the Hon'ble Supreme Court vide

Annexures A-1 to A-5 and The Entitlement Rules, 1982 by setting aside that part of the Medical Board (Impugned Order 1) and the consequent

rejections (Impugned Order 2) wherein his disability has been opined to be neither attributable to nor aggravated by military service being not only in

conflict with the rules but also in direct contravention of a series of decisions of the Hon'ble Supreme Court (as seen supra):

(ii) With a further Prayer that the Respondent's may be directed to grant the benefit of Board Banding upon any Disability Pension ordered to released

by the Hon'ble Tribunal, in line with the judgment of the Hon'ble Supreme court in Union of India V/S Ram Avtar;

(iii) With a further prayer that the Respondents may be directed to release the

disability pension and its arrears with heavy costs and compensation and interest within a time-bound manner;

(iv) Any other relief which the Hon'ble Tribunal may deem fit in the interest of petitioner.

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Army on 25.02.1991 and was discharged from service on 31.12.2007

in low medical category after rendering 16 years and 10 months service. The Release Medical Board (RMB) held at Military Hospital, Ambala Cantt

on 28.08.2007, assessed his disability ""GENERALISED TONIC CLONIC SEIZURE (G.40.0)"" @ 20% for life. However, the RMB opined that the

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

was not granted by the respondents vide order dated 01.02.2008. Hence the instant Original Application.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in Naval 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 pre-commissioning 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 disability of the applicant is to be considered as aggravated by service and he is entitled to get

disability pension @ 20% for life and the same is to be broad banded to 50%.

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

disability of the applicant @ 20%, it opined that the disability is NANA and constitutional in nature. As such his claim for disability pension has rightly

been rejected by the respondents. He submitted that the instant Original Application does not have any merit and the same is to be dismissed.

5. Having heard the learned counsel for both the parties and perused the records, the only question that needs to be answered is, whether the disability

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

6. We have noted that the only reason for which the disability has been opined as NANA by the RMB is that the disease is constitutional in nature.

The disability was first detected on 20.12.1996 whereas the applicant was enrolled on 25.02.1991 i.e. after more than 5 1/2 years of service. Medical

literature clearly indicates that besides genetic factors, head injury and certain types of infections may trigger the onset of this disease. We are

therefore of the opinion that the reasons given in RMB for declaring disease as NANA is very brief and cryptic in nature. Hence, we would like to

give the benefit of doubt in favour of the applicant. Thus we are of the considered opinion that the disability ""GENERALISED TONIC CLONIC

SEIZURE (G.40.0)"" 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). Additionally, the applicant will also be eligible for the benefit of rounding off to 50%, in terms of the decision of

Hon'ble Supreme Court in Union of India and others 11. Ram Avtar (Civil Appeal No 418 of 2012 dated 10.12.2014).

7. Resultantly, the O.A. is allowed. The impugned orders are set aside. The applicant's disability ""GENERALISED TONIC CLONIC SEIZURE

(G.40.0)"" @ 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. However, in view of the decision of the Hon'ble Supreme Court in Union of India vs. Tarsem Singh reported in 2009 (1) AISLJ 371, the

arrears of disability element 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

18.12.2017. 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.

8. No order as to costs.

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

Pronounced in the open Court on 5th March, 2020.