

(2020) 01 AFT CK 0041

In the Armed Forces Tribunal

Case No : Original Application No. 528 Of 2019, Miscellaneous Application No. 1096 Of 2019

Devender Sharma

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 02-01-2020

Acts Referred:

Citation : (2020) 01 AFT CK 0041

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

Bench : Division Bench

Advocate : S M.Dalal, Y.P.Singh

Final Decision : Disposed Of

Judgement

1. By virtue of this OA. applicant claims disability element of pension for two disabilities, i.e., Primary Hypertension and Subclinical Hypothyroidism (Grave Disease).

2. During the course of arguments, counsel for the applicant submits that he confines the relief to Primary Hypertension only and not to the other disability.

3. It is further stated that case is squarely covered by number of judgments which is not disputed by counsel for the respondents.

4. Vide separate order, GA.stands allowed and is disposed off.

MA 1096/2019

1. Vide this MA the applicant seeks condonation of delay of 287days in filing the present OA. Keeping in view the averments made in the application

and finding the same to be bonafide and in the light of the decision in Union of India and others Vs. Tarsem Singh [2008 (8) SCC 648]. we allow the

instant MA and condone the delay of 287 days in filing the OA.

2. MA 1096/2019 stands disposed of accordingly.

OA 528/2019

3. Having been found medically and physically fit, the applicant was commissioned in Indian Air Force on 10.08.1981 and was superannuated from service on 31.10.2017. Before proceeding on discharge, the applicant was subjected to Release Medical Board (RMB). The Release Medical Board found that the applicant was suffering from disability namely ""PRIMARY HYPERTENSION"" and Subclinical Hypothyroidism (Grave Disease') and assessed at 30% and 15-19% for life, composite assessment at 40% treating it as neither attributable to nor aggravated by service.

4 Learned counsel for the applicant at the outset submitted that he is pressing the relief for Primary Hypertension only. He further contended that the instant matter is squarely covered by a catena of decisions of the Hon'ble Supreme Court including Dharamvir Singh Vs Union of India and Ors.

(2013) 7 SCC 316. Union of India and Ors. Vs. Rajvir Singh (2015) 12 SCC 26 4and Union of India and Ors Vs. Angad Singh Titaria, (2015) 12 SCC

257. Further. the claim of the applicant is also supported by relevant rules,

5. Per contra, learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the Release Medical Board.

being an Expert Body, found the disability ""Neither Attributable to Nor Aggravated by Service"".

6. Having heard learned counsel on both sides. we are of the view that the case on hand is squarely covered by the decisions referred to herein above,

In Dharamvir Singh (supra) the Hon.ble Supreme Court held that any disability sustained during the course of Military Service will be attributed to

service conditions unless the disability was such that the disease could not have been detected on medical examination before a person is selected for

Defence Service and furthermore before arriving at a conclusion the Release Medical Board should have assigned reasons, in writing, that the

disability was not due to Military Service. There is no dispute with regard to the fact that when the applicant entered into service, he was not suffering

from any disease and that the disability in question was detected/sustained only during the course of his Military Service.

7. The matter for implementation of orders of the Hon'bie Supreme Court in the

matter of Dharamvir Singh (supra) in respect of Armed Forces

Personnel in NANA cases was taken up with the Department of Expenditure, Ministry of Finance for consideration, Accordingly, Ministry of

Defence by their letter dated 29th June, 2017 sent to the Chief of Staff of Army, Navy and Air Force for implementation of the orders of Hon.ble

Supreme Court, has laid down the following essential parameters for allowing disability pension:

I. 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 for military service, a disease which has laid to an

individual's discharge or death will 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.

8. In the light of the preceding paragraphs and essential parameters given aforesaid, we hereby set aside the impugned order rejecting the claim of the

applicant for disability pension for disability Primary Hypertension and hold that he is entitled to disability element of pension from the date of his

retirement at the rate of 30% for life, which is to be broad banded to fifty per cent in the light of the judgment of the Hon'ble Supreme Court in Union

of India and Ors Vs

9. The respondents are directed to release the arrears within a period of four months from the date of receipt of a copy of this order, failing which the

arrears shall carry interest at the rate of six per cent per annum.

10. The O.A. stands disposed of in the above terms with no order as to costs.