

(2019) 10 AFT CK 0029
In the Armed Forces Tribunal
Case No : Original Application No. 864 Of 2017

Dilip Kumar Shukla

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0029

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

Bench : Division Bench

Advocate : O.S. Punia, V. Pattabhi Ram

Final Decision : Allowed

Judgement

1. The applicant, Ex. Sgt. Dilip Kumar Shukla, through the medium of the instant Original Application is seeking the following reliefs:

(A) Direct the respondents to consider the disability. of the applicant as attributable to and aggravated by service, and grant disability pension to the applicant v4ef 01.04.2010.

(B) Direct the respondents to give the benefits of rounding off of disability element from 40% for life to 50% for life and grant disability pension

me,f. 01.04,2010 @lam for life 'n the fight of law laid down by Hontble Supreme Court alongwith interest 12% per annum alongwith all

consequential benefits; and

(C) To award any other/further relief which this Hontle Tribunal may deem fit and proper in the facts and circumstances of the case alonai.vith cost

of the application in favour of the apptlicant and against the respondents.

2, The facts of the case, in brief, are that the applicant was enrolled in the Indian Air Force on 16.03.1990 and was discharged from service on

31.03.2010 in low medical category. The Release Medical Board (RMB) held at 402 AF Station Kanpur on 09.06.2009 assessed his disability

'BILATERAL RETINAL VASCULITIS WITH VITREOUS HAEMORRHAGE (LT) EYE OPTD OLD H-34.0r H43.11 Z-09.0' @ 40% 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 rejected by the respondents vide order dated 24.08.2009. The applicant's first and second appeals have also

been rejected by the respondents vide orders dated 08.04.2010 and 16.01.2014. Hence the instant Original Application,

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in Air Force 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 denying disability pension

to the applicant is illegal. In this regard, he relied on the decision of the Honorable 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 of 40% for life and the same is to be broad based 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 as 40%, it opined that the disability is NANA. 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 to look at the only reason for which the disability has been opined as NANA by the RMB is that as per para 24 of the chapter VI of

amended chapter VI & VII guide iv MO 2008. The origin of disease in peace area

and not connected with service. The disability was first detected on 19.07 2006 i.e. after more than 15 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 does not adequately explain the denial of attributability. Additionally we are of the opinion that it is not correct to say that there is no stress and strain of military service in peace areas. Hence, we are inclined to give benefit of doubt, in this case, to the applicant. Thus it is the considered opinion that the disability 'BILATERAL RETINAL VASCULITIS WITH VITREOUS HAEMORRHAGE (LT) EYE OPTD OLD H-34.01 H43.11, Z-09.011.3 to be = 1 -111 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 v. Ram Avtar (Civil Appeal No. 418 of 2012 dated 10.12.2014).

7. Resultantly, the G.A. is allowed, The impugned orders are set aside. The applicant's disability 'BILATERAL RETINAL VASCULITIS WITH VITREOUS HAEMORRHAGE (LT) EYE OPTD OLD H-34.0, H43.11, Z-09.011.3 to be = 1 -111' considered as aggravated by military service, his disability element of pension is to be rounded off from 22.6% to 50% for life from the date of discharge. However considering the fact that the G.A. has been admitted after condonation of delay and laches, therefore, in view of the decision of the Hon'ble Supreme Court in Shiv Doss 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 G.A. The date of filing of this G.A. is 05.05.2017. Ordered accordingly. To be implemented by the respondent within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum.

8. No order as to costs.