

(2019) 11 AFT CK 0032

In the Armed Forces Tribunal

Case No : Original Application No. 60 Of 2019, Miscellaneous Application No. 460 Of 2019

Jai Bhagwan

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 28-11-2019

Acts Referred:

Citation : (2019) 11 AFT CK 0032

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

Bench : Division Bench

Advocate : V.S. Kadian, Shyam Narayan

Final Decision : Disposed Of

Judgement

1. Counter affidavit has already been filed by the respondents. Counsel for the applicant does not want to file rejoinder.

Arguments heard

Vide separate order, OA stands disposed off.

MA 460/2019

Heard learned counsel for the parties on the point of delay.

In view of the averments made in the application and in the light of the decision in Union of India and others versus Tarsem Singh 2009 (1) AISLJ

371. we allow the instant MA and condone the delay of 1070- days in filing the OA. Same is taken on the record. MA stands disposed off

OA 60/2019

Having been found medically and physically fit, the applicant, who was enrolled in the Indian Army in the Signal Corps on 15.12.1987, was discharged

from service on 31.12.2017 in low medical category. The Release Medical Board held at the time of retirement found the applicant was suffering

from the disability (i) PRIMARY HYPERTENSION (ii) OBESITY E 66.0 assessed composite @ 30% considering the disabilities as neither

attributable to nor aggravated by military service.

2. Learned counsel for the applicant 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 31 6 Union of India and Ors. Vs. Rajvir Singh (2015) 12 SCC 26 4 and 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. Learned counsel

further confined his relief for grant of disability element for disability Primary Hypertension only which was assessed at 30% for life.

3. 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 disabilities ""Neither Attributable to Nor Aggravated by Military Service"".

4. 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. 5 The matter for

implementation of orders of the Hon'ble 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.

6. 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 and hold that he is entitled to disability element of pension for disability 'Primary Hypertension' 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 Honble Supreme Court in Union

of India and Ors. Vs. Ram Avtar decided on 10th December, 2014.

7. Since the applicant has come to this Tribunal after considerable delay, hence the arrears are restricted to three years prior to the date of filing of the application (i.e. 02.01.2019).

8. 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 percent per annum.

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