(2020) 02 AFT CK 0043

In the Armed Forces Tribunal

Case No : Original Application No. 1916 Of 2018, Miscellaneous Application No. 2119 Of 2018

Janak Singh Shekhawat APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 17-02-2020

Acts Referred:

Citation : (2020) 02 AFT CK 0043

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

Bench : Division Bench

Advocate : Durgesh Kumar Sharma, Arvind Patel, P.K. Dadwa

Final Decision : Disposed Of

Judgement

1. Arguments heard.

Vide separate order, OA stands disposed of.

M.A. No. 2119 of 2018:

Heard learned counsel for the parties on the point of delay. Delay of 1670 days in filing the OA has been explained by the applicant. Keeping in view

the averments made in the MA 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 in filing the OA. However, in case the applicant succeeds in the matter, he will

be entitled to the arrears restricted to three years prior to the date of filing the OA.

M.A. No. 2119 of 2018 stands disposed of accordingly.

O.A. No. 1916 of 2018:

2. The applicant, having been found medically and physically fit, was commissioned in the Indian Air Force on 11.03.1991. The applicant was released

from service on 31.03.2014 on completion of his terms of engagements in low medical category A4G2 (P) of S1H 1A1P2E1. At the time of his

retirement from service, since the applicant was in low medical category, he was brought before the duly constituted Release Medical Board (RMB)

on 16.04.2013 and subsequent days, which assessed the applicant's disability i.e. PRIMARY HYPERTENSION (Old) Z-09.0 @ 30% (originated in

March, 2009) for life, but the same was held as 'Neither attributable to Nor aggravated by military service' (NANA)'.

3. 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. Rajbir 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.

4. Per contra, learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, being an Expert

Body, found the disabilities ""Neither Attributable to Nor Aggravated by Military Service"".

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

In Dharamvir Singh's case (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.

6. The matter for implementation of orders of the Horible 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 Honble

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.

7. In view of the settled law on attributability, we have noticed that the Release Medical Boardhas denied attributability to military service to the

applicant, on the ground that this disease has originated in peace area and not in a field/CI Ops/HAA area. We are of the opinion that the stress and

strain of the military service is related to the basic nature of military duty and it cannot be compartmentalised to field/CI Ops/HAA area. Thus, we are

of the view that the benefit of doubt in this case goes in favour of the applicant. Therefore, in view of the law settled by the Honble Supreme Court in

Dharanwir Singh's case (supra), we are of the considered opinion that this disease is to be considered as aggravated by military service.

8. In 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 disability pension from the date of his release from service @ 30%

for life, which is to be broad-banded to 50% in light of the judgment of the Honiple Supreme Court in Union of India and Ors. Vs. Ram Avtar [Civil

Appeal 418 of 20121 decided on 10.12.2014.

9. Accordingly, the respondents are directed to implement this order within a period of four months from the date of receipt of a copy of this order,

failing which, the arrears shalr carry interest at the rate of 6% per annum.

10. Since the applicant has come to this Tribunal after a considerable delay, hence the arrears are restricted to three years preceding to the date of

filing of the OA i.e. 20.11.2018.

11. The OA stands disposed of in the above terms with no order as to costs.

