
(2020) 03 AFT CK 0052

In the Armed Forces Tribunal

Case No : Original Application No. 1375 Of 2016

Jaswant Singh Labana

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 11-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0052

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

Bench : Division Bench

Advocate : V.S. Kadian, Ashok Chaitanya

Final Decision : Disposed Of

Judgement

1. The applicant, Col. Jaswant Singh Labana (Retd.), through the medium of the instant Original Application is seeking the following reliefs:

(a) Direct respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant disability element wef date of

his retirement and also grant benefit of rounding off/broad banding benefits of disability element @50% in terms of Govt of India. Min of Defence

letter no 1(2)/97/D(Pen-C) dated 31.01.2001 and law settled by Hon'ble Supreme Court in Civil Appeal No 418/2012 titled U01 & Ors v. Ram Avtar

vide judgment dated 10.12.2014. And/or

(b) Direct respondents to pay the due arrears of disability element with interest @12% p.a. from the date of his discharge.

(c) Direct respondents to supply copy of Release Medical Board to the applicant.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

3. Learned Counsel for the applicant pleaded that at the time of commission, the

applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of commission in Army. The disease of the applicant was contacted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof.

He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension and its rounding off to 50%.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings. The question which needs to be answered is straight and simple i.e. whether the disability of applicant is attributable to or aggravated by military service?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of Dharamvir Singh Versus Union of India & Others, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same.

7. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the disability 'NIDDM TYPE - II' is not connected with service. The disability has originated for the first time on 03.02.2000 whereas the applicant was commissioned in the year 23.12.1973 i.e. after about twenty six years of military service. Considering all issues we are of the opinion that the reasons given "in RMB for declaring the disease as NANA i.e. "Not connected with" "service" are very brief and cryptic. Therefore, benefit of doubt in these circumstances should be extended in favour of the applicant in view of the law settled on this matter by Dharamvir Singh vs Union of India & Ors (supra). Hence, we consider the disability of the applicant as aggravated by military service, as such the applicant is entitled for the disability pension for five years from the date of his discharge i.e. 30.06.2007.

8. The applicant relied upon an order dated 20.07.2017 passed in OA 1698/2016

Col. L.B. MaIla Vs. Union of India and others where despite limiting

the assessment of disability to 5 years, applicant was granted benefit of disability element of pension for life. With due respect, this order does not help

the applicant because in that case it was observed that the aspect of categorising a person for a limited time, in a permanent medical category has no

significance any more, in the light of letter

9. Despite Government Policy letter dated 07.02.2001, the Release Medical Board held in January 2007, in their wisdom has decided to limit the

disability to five years and had not declared it permanent and for life. Hence, it will be in order if a RSMB for life is conducted by respondents in line

with Para 10 of the above mentioned Government letter.

10. In view of the above, the Original Application No. 1375 of 2016 deserves to be partly allowed, hence, partly allowed. The disability of the applicant

NIDDM TYPE-II"" is to be considered as aggravated by military service. Since, the applicant's RMB was valid for five years w.e.f. 30.06.2007 and

in view of decision of the Hon'ble Supreme Court in Union of India Vs. Tarsem Singh, reported In 2009 (1) AISLJ 371 with regard to law of limitation,

the applicant is not entitled for the arrears of disability element. Applicant's further entitlement to disability element will be subject to the outcome of

RSMB. The respondents are directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension.

Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order.

11. No order as to costs.

12. Pending application(s), if any, also stand disposed of.

Pronounced in the open court on 11th March, 2020.