

(2019) 10 AFT CK 0041
In the Armed Forces Tribunal
Case No : Original Application No. 677 Of 2017

Krishna Kumar Saraswat

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0041

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

Bench : Division Bench

Advocate : A.K. Srivastava, Harish V. Shankar

Final Decision : Allowed

Judgement

1. Aggrieved by the impugned order dated 18.04.2012, denying him disability element of pension the applicant has filed the instant O.A seeking the

following reliefs:

(a) Direct the Respondents to pay disability pension duly rounded off to gi 50% w.e.f. the date of his discharge alongwith interest @ 90/son the

arrears thereof.

(b) That the Applicant be awarded cost of the litigation @ Rs. 75,000/-.

(c) To pass any such other and further order or orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice and in the facts and

circumstances of the case.

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Army on 20.02.1996 and was discharged from service on 01.03.2012

in low medical category after serving more than 16 years of service on his own request as premature discharge. The Release Medical Board (RMB)

assessed his disability 'CNS (INV) Generalized Seizure' @ 20% for life. However, the RMB opined that the disease of the applicant was neither

attributable to nor aggravated by military service (NANA). His claim for disability pension was rejected vide letter dated 18.04.2012. Thereafter the

applicant has not filed any appeal and approached this Tribunal without exhausting the remedies available to him. Hence the instant O.A.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in service and any disability not recorded at

the time of recruitment should be presumed to have been caused subsequently. The action of the respondents in denying disability pension to the

applicant is unjust. In this regard, he relied on the decision of the Hon'ble Supreme Court in Dharamvir Singh v. Union of India and others (2013) 7

SCC 316 and submitted that the disability of the applicant should be considered as aggravated by service and he is entitled to get disability pension @

20% to be broad banded to 50%.

4. On the other hand, learned counsel for the respondents submitted that though the RMB had assessed the disability of the applicant @ 20% for life,

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 O.A does not have any merit and the same should 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 noted that the only reason for which the disability has been opined as NANA by the RMB is that the disease 'CNS (INV) Generalized

Seizure' has originated in peace area and not Fd/HAA/CI area. However, on further scrutiny, we have observed that the applicant developed 'CNS

(INV) Generalized Seizure' in June 2008 i.e. after 12 years of service. We don't agree that there is no stress & strain of military service in peace

area. Thus we are of the considered opinion that the benefit of doubt must go to the applicant and 'CNS (INV) Generalized Seizure' is to be

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 O.A is allowed. The impugned order is set aside. The applicant's disability 'CNS (INV) Generalized Seizure' is to be considered as

aggravated by military service. The applicant is entitled to disability element of disability pension @ 200/cfor life, which shall be broad banded to 50%

for life from the date of his discharge from service. However, due to law of limitations settled by the Honible Supreme Court in the case of Shiv Dass

v. Union of India and others (2007 (3) SLR 445), the arrear of disability element will be restricted to three years before the date of filing of the instant

O.A. The date of filing of this O.A is 18.04.2017. The respondents are directed to give effect to this order within four months from the date of receipt

of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

8. No order as to costs.