

(20) 06 AFT CK 0046

In the Armed Forces Tribunal

Case No : Original Application No. 1863 Of 2017

MS Raju

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 17-06-20

Acts Referred:

Citation : (20) 06 AFT CK 0046

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

Bench : Division Bench

Advocate : R.K. Tripathi, Rajesh Kumar Das

Final Decision : Dismissed

Judgement

1. Aggrieved by the denial of disability pension, the applicant has filed the instant O.A seeking the following reliefs:

(i) To call for the records of the Release Medical Board Proceeding for your lordships perusal.

(ii) To set aside the orders of the Second Appellate Committee on pension issued vide Additional Directorate General personnel Services letter No

B/38046A/88/2016/AG/PS-4(2nd appeal) dated 04 May 2017, Annexure Al.

(iii) To direct the Respondents to pay the Applicant the disability pension at the rate of 50% for life after broad banding.

(iv) To direct the Respondents to pay the Arrears of disability pension with interest as deemed fit by your Lordships with effect from the next day of release of the Applicant.

(v) To grant any other relief as the Honible members of the Tribunal may deem appropriate.

3. Learned Counsel for the applicant submitted that the applicant was medically

fit when he was enrolled/commissioned in Army service and any disability not recorded at the time of enrolment/commission 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 Honble 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 diseases to military service, what is material is whether the disabilities were 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 disabilities arose while in service, therefore, the disabilities of the applicant is to be considered as aggravated by service and he is entitled to get disability pension @ 30% for life and the same is to be broad banded to 50% for life.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that though the RMB had assessed the disabilities of the applicant composite @ 30% for life, it opined that the disabilities are NANA and both the disabilities occurred in peace area and not connected with service. 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 disabilities of the applicant are attributable to or aggravated by military service? service and hence, are NANA. In a similar case on 08.07.2019, Honble Supreme Court has dismissed the Civil Appeal (Diary No. 21017/2019) Gyanendra Singh Versus Union of India & Others, arising out of Judgment and order dated 20.02.2019 passed by this Tribunal in O.A. No. 1656 of 2016.

8. In view of the above, the applicant has failed to make out a case for himself. Hence, this Original Application is liable to be dismissed, hence, dismissed.

9. No order as to costs.

10. Pending application(s), if any, also stand disposed off.

Pronounced in the open Court on 17th 2020.