
(2020) 03 AFT CK 0077

In the Armed Forces Tribunal

Case No : Original Application No. 280 Of 2017

Nandkishore Vasant Shouche

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 17-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0077

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

Bench : Division Bench

Advocate : A.S. Puar, Jyotsana Kaushik

Final Decision : Disposed Of

Judgement

1. The applicant, Lt. Col. Nandkishore Vasant Shouche (Retd.), through the medium of the instant Original Application is seeking the following reliefs:

(i) Petitioner, hence, prays for grant of disability pension in accordance with the applicable Rules and as held by the Hon'ble Supreme court vide

Annexure A-1 to A-5, and The Entitlement Rules, 1982, by setting aside that part of the Medical Board (Annexure A-6) which deems his disabilities

to be Not Attributable and Not Aggravated by service due to their being Constitutional in Nature", and the consequent rejection (Annexure A-8 CoIly)

wherein the disabilities has been opined to be neither attributable to, nor aggravated by military service on the present that the App/cant was a

premature retiree, being not only in conflict with the Rules but also in direct contravention of a series of decisions of the Hon'ble Supreme Court

(supra);

(ii) That the Respondent's may be directed to grant the benefit of broad banding of the percentage of disability element henceforth applicable to the

Applicant;

(iii) With a further Prayer that the Respondents may be directed to release the disability pension as per (I) and (ii) above, and its arrears with heavy

costs and compensation and interest within a time-bound manner:

(iv) Any other relief which the Hon'ble Tribunal may deem fit in the interest of justice and in favour of the Petitioner.

2. Briefly stated facts of the case are that the applicant was commissioned in Indian Army on 13.06.1972 and was discharged on 27.06.1992 in Low

Medical Category premature retirement. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital,

Namkum on 01.06.1992 assessed his disabilities (i) 'ASYMPTOMATIC IHD V-67 414' @20% for two years (ii) 'ESSENTIAL HYPERTENSION

(OLD) V-67' 401 @20% for two years and (iii) 'DIATETES MELLITUS V-67 250 (C)' @20% for two years, composite @50% for two years but

opined the disabilities to be neither attributable to nor aggravated (NANA) by military service. The claim of disability was rejected by the respondents

vide their letter dated 29.07.2016. It is in this perspective that the applicant has preferred the present O.A.

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 contracted 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%.

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant i.e. 'ASYMPTOMATIC IHD V-67 414' @20% for

two years (ii) 'ESSENTIAL HYPERTENSION (OLD) V-67' 401 @20% for two years and (iii) 'DIATETES MELLITUS V-67 250 (C)' @20% for

two years, composite @50% for two years has been opined by RMB to be neither attributable to nor aggravated by military service. Further, as per

provision contained in Para 50 of Pension Regulation for the Army 1961 (Part I), an officer who retires voluntarily shall not be eligible for an awards on account of any disability. Thus his claim for grant of disability pension has rightfully been rejected by the respondents. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB proceedings. The question which needs to be answered is straight and simple i.e. whether the disabilities of applicant are 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 IMB has denied attributability to the applicant only by endorsing that all the three disabilities of the applicant are not connected with service. However, when we get into the details of the three disabilities and the fact that they have surfaced after seven years of service and a few years after tenure in Jammu & Kashmir, we are of the considered opinion that for the two of these disabilities 'ESSENTIAL HYPERTENSION (OLD) V-67' 401 and 'DIABETES MELLITUS V-67 250 (C)' the 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 second and third disabilities of the applicant as aggravated by military service, as such the applicant is entitled for the

disability pension for two years from the date of his discharge i.e. 27.06.1992. However, considering all issues involved, we agree with the opinion of

RMB that the first disability i.e. 'ASYMPTOMATIC IHD V-67 414' @20% for two years is NANA.

8. Since the applicant was discharged from service on 27.06.1992 as a case of pre mature retirement, hence, as per rules applicable at that time he was not eligible for disability pension. However, after 01.01.2006, as per

recommendations of VI C.P.C. pre mature reitrees are eligible for disability pension.

9. Since the applicant's RMB was valid for two years w.e.f. 27.06.1992, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability element.

10. In view of the above, the Original Application No. 280 of 2017 deserves to be partly allowed, hence, partly allowed. The applicant is in receipt of

service pension. Since, the applicant's RMB was valid only for two years after his discharge in 1992 and he is now eligible for disability pension,

therefore, the respondents are directed to conduct a Re-Survey Medical Board for the applicant to assess his future 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 17th March, 2020.