

(2019) 10 AFT CK 0025
In the Armed Forces Tribunal
Case No : Original Application No. 417 Of 2017

Naveen Kumar Rajak

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0025

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

Bench : Division Bench

Advocate : Ajit Kakkar, Shyam Narayan

Final Decision : Allowed

Judgement

1. The applicant titrouxii thy.: niudium of the instant OA has made the following prayers:

(a) To set aside the finding of Invalid medical board conducted in respect of applicant which is not attributable .or aggravated by service.

(b) To issue direction to consider the invaliciment attributablelassravated by service and to grant applicant invalid/disability pension.

(c) To direct the respondents for rounding off the disability pension of tlif: applicant from 40% to 50%.

(d) Issue such other order/direction. as may be deemed appropnate in the facts and circumstances of the case.

2. The applicant was enrolled in the Indian Air Force as an airman on 3014 March, 2011, after going through a thorough medical examination, wherein

he was found medically fit. He was invalided out from service vkrith effect from 18th March, 2014 after putting in three years service in low medical

category. The Release Medical Board assessed his disability ""Delusional

Disorder"" at the rate of forty per cent for life; neither attributable to nor aggravated and also not connected with military service. h is in these circumstances that the applicant has preferred the present OA.

3. The learned counsel for the applicant has contended that since the applicant was found mentally and physically fit at the time of enrolment and

there is no mention in his service documents that the applicant was suffering from any disease, he is entitled to disability pension. In support of his

contentions, Learned counsel has placed reliance on the decision of the lion'ble Supreme Court in Dharanivir Singh Vs. Union of India and Ors. (2013

7 SCC 3161.

4. On the other hand, learned counsel for the respondents contended that the claim of the applicant for grant of disability pension was adjudicated by

the competent authority. However the samc was rejected as NANA on the grounds that the. disability, Az, ""Delusional Disorder"", as recorded in

Release Medical Board proceedings, had first started in peace and there was no co-relating factor with any posting tad/CI/CT Ops area. He

concluded by stating that the applicant is not entitled to disability pension.

5. We have heard learned counsel on both sides and have also gone though the documents available on record,

6. The only questions whichneeds our consideration is as to whether the disease ""Delusional Disorder"" of the applicant is attributable to or aggravated

by military service.

7. We have noted that this disabilityis a type of mental disorder. It was detected for the first time in June 2013 i.e. after about two and half years of

service. The primary reason for rejection of attributability/aggravation by military service as given in Invalidment Medical Board is that the disease has

originated in a

peace area and has no co-relation to Fcl/C1/(7. Ops related posting. We don't agree with this logic that there can be no stress and strain of military

service in peace areas of military personnel. This is a case of a soldier who has completed training successfully, is already attested and has completed

over two and a half years of service before onset of disease, Therefore, we are of the opinion that benefit of doubt in the present set of circumstances

leans in favour of the applicant. Hence in the interest of justice, we would treat this disease as aggravated by military service.

8. So far as the rounding off is concerned, in the light of the decision of the Hon'ble Supreme Court in the case of Union of India and Ors. Vaani A viar

and Ors. (Civil Appeal No.418 of 2012 decided on 10 September, 2014) and Suichvinder Sinsh Vs, Union of India 1(2014) 14 SCC 364], we are of the

considered opinion that the applicant is entitled to the benefit of rounding off from forty per cent to fifty per cent for life with effect from the date of

his discharge from service, i.e., 18th March, 2014.

9. In view of the above, the OA is partly allowed. The disability of the applicant ""Delusional Disorder"" is to be considered as aggravated by military

service. The applicant will be entitled to disability pension with effect from the date of discharge i.e., 18th March, 2014. His disability element at the

rate of forty per cent for life will stand rounded off to fifty per cent for life with effect from the date of his discharge. The respondents are directed to

comply with this order within four months from the date of receipt of a copy of this order. In default it will carry interest at the rate of eight per cent

until the actual payment is made.

10. In view of the above, the instant OA deserves to be allowed, hence allowed. No order as to costs.