

(2019) 09 AFT CK 0005

In the Armed Forces Tribunal

Case No : Original Application No. 1115 Of 2017, Miscellaneous Application No. 179 Of 2018

Ravi Datta Shukla

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 03-09-2019

Acts Referred:

Citation : (2019) 09 AFT CK 0005

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

Bench : Division Bench

Advocate : O.S. Punia, V.S.Mahndiyan

Final Decision : Disposed Of

Judgement

MA 179/2018

1. Vide this application applicant seeks condonation of delay of 40 days in filing the rejoinder.

In view of the averments made in the application, delay of 40 days in filing the rejoinder is condoned. Same be taken on the record.

MA stands disposed off.

OA1115/2017

Having been found medically and physically fit, the applicant was enrolled in Indian Air Force on 2.7.1980 and was superannuated from service on

31.07.2000 Before proceeding on discharge, the applicant was subjected to Release Medical Board(RMB). The Release Medical Board found that

the applicant was suffering from disability namely "" LT. PARTIAL SEIZURE WITH SECONDARY GENERALISATION"" which was assessed

at 20% for 2 years treating it as neither attributable to nor aggravated by service.

2. Learned counsel for the applicant contended that the instant matter is squarely covered by a catena of decisions of the Hon'ble Supreme Court

including *Dharamvir Singh Vs Union of India and Ors.* (2013) 7 SCC 316 U, *nion of India and Ors. Vs. Rajvir Singh* (2015) 12 SCC 26 4 and *Union of*

India and Ors Vs. Angad Singh Titaria, (2015) 12 SCC 257. Further, the claim of the applicant is also supported by relevant rules.

3. Per contra, learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the Release Medical Board,

being an Expert Body, found the disability ""Neither Attributable to Nor Aggravated by Service"".

4. Having heard learned counsel on both sides, we are of the view that the case on hand is squarely covered by the decisions referred to herein above.

In *Dharamvir Singh* (supra) the Hon'ble Supreme Court held that any disability sustained during the course of Military Service will be attributed to

service conditions unless the disability was such that the disease could not have been detected on medical examination before a person is selected for

Defence Service and furthermore before arriving at a conclusion the Release Medical Board should have assigned reasons, in writing, that the

disability was not due to Military Service. There is no dispute with regard to the fact that when the applicant entered into service, he was not suffering

from any disease and that the disability in question was detected/sustained only during the course of his Military Service.

5. The matter for implementation of orders of the Hon'ble Supreme Court in the matter of *Dharamvir Singh* (supra) in respect of Armed Forces

Personnel in NANA cases was taken up with the Department of Expenditure. Ministry of Finance for consideration. Accordingly, Ministry of

Defence by their letter dated 29 June, 2017 sent to the Chief of Staff of Army, Navy and Air Force for implementation of the orders of Hon'ble

Supreme Court, has laid down the following essential parameters for allowing disability pension:

I. The question whether a disability is attributable or aggravated by military service is to be determined under ""Entitlement Rules for Casualty

Pensionary Awards 1982.

II. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In

the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service.

III. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has laid to an

individual's discharge or death will be deemed to have arisen in the service.

IV. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease

will not be deemed to have arisen during service, the medical board is required to state the reasons.

6. In the light of the preceding paragraphs and essential parameters given aforesaid, we hereby set aside the impugned order rejecting the claim of the

applicant for disability pension and hold that he is entitled to disability element of pension from the date of his retirement at the rate of 20% for 2 years,

which is to be broad banded to fifty per cent in the light of the judgment of the Hon'ble Supreme Court in Union of India and Ors. Vs Ram Avtar

decided on 10'h December, 2014.

7. The respondents are directed to release the arrears within a period of six months from the date of receipt of a copy of this order, failing which the

arrears shall carry interest at the rate of eight per cent per annum.

8. The C.A. stands disposed of in the above terms with no order as to costs.