

(2019) 09 AFT CK 0039

In the Armed Forces Tribunal

Case No : Original Application No. 1718 Of 2017

Ravikant Prajapati

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 05-09-2019

Acts Referred:

Citation : (2019) 09 AFT CK 0039

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

Bench : Division Bench

Advocate : Ajii Kakkar, JS Yadav

Final Decision : Disposed Of

Judgement

1. Arguments heard. Vide separate order OA stands disposed off

By way of the instant DA, the applicant seeks the following reliefs:

(a) To direct the respondents to place all medical records including medical boards conducted by the respondents and representations made by the applicant.

(b) To direct the respondents to grant the disability pension to the applicant w.e.f. 10.05.2011.

(c) To direct the respondents to grant the benefit of broad banding by rounding off disability pension from 40% to 50%.

(d) To direct the respondent to pay 12% interest on the arrears of pension and other benefits.

(e) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.

2. The applicant was enrolled in The Indian Navy on 29th July, 2009, after being found physically and medically fit. He was invalided out from service

on 9th May, 2011. The Invaliding Medical Board assessed his disability ""OTHER NON ORGANIC PSYCHOSIS"" at the rate of forty per cent for

life; neither attributable to nor aggravated by military service. However, dissatisfied with the decision of the Invaliding Medical Board, the applicant

filed an appeal and the Appeal medical Board assessed his disability ""OTHER NON ORGANIC PSYCHOSIS"" as not attributable to but aggravated

by military service. However, the Appellate Committee rejected the first Appeal.

3. Learned counsel for the applicant contended that at the time of enrolment, the applicant was found mentally and physically fit for service and there

is no note in the service documents that he was suffering from any disease, mental or physical, therefore, he is entitled to disability pension. In support

of his contentions, he mainly relied on the decision in Dharinvir Singh Vs. Union of India and Off. 1(2013) 7 SCC 31 GI and Ex Gnr Laxmannlin

l'oonia Vs. Union of India and Ors. [(20 7) 4 SCC 6971.

4. On the contrary, learned counsel for the respondents contended that the disability of the applicant at the rate of forty per cent had been opined by

the Invaliding Medical Board as neither attributable to nor aggravated by military service. Learned counsel, however, conceded that the Appeal

medical Board, at the time of re-assessing the disability of the applicant at the rate of forty per cent for life have assessed the same ""not attributable to;

but aggravated by service"". However, he pleaded that since the appeal for grant of disability pension had been rejected by higher competent authority,

the instant OA should also be dismissed.

5. We have heard learned counsel on both sides and have also gone through the documents and the medical board proceedings available on record.

6. In the present scenario the only question that arises for our consideration is whether the disability of the applicant is attributable or aggravated by

military service.

7. The factual details reveal that the applicant while training at INS Ajay suffered with Chicken Pox. It was post recovery from chicken pox that a

sudden change was noticed in the behavioural attitude of the applicant resulting in disobedience, excessive saluting etc. etc. and he was most of the

time found under hallucination/delusion affecting his mind. In the Appeal Medical Board the specialist doctor has agreed that chicken pox affected the

behaviour of the applicant. The prime factors like family history of mental illness

and/or past medical or surgical history, which play a major role in the onset of such a disease, were found to be missing. It further observed that since the applicant was 'AFLOAT', i.e., had been serving on board INS Ajay just a month prior to onset hence the disability of the applicant has been opined as aggravated by military service. Thus once the Appeal Medical Board held by the respondents has conceded that the disability is aggravated by military service, we do not think that the respondents are justified in denying the same on the grounds that the competent authority in higher formation has over-ruled the Appeal Medical Board opinion. Therefore, in the interest of justice and fair play the said disability ""OTHER NON ORGANIC PSYCHOSIS"" is to be considered as aggravated by military service in terms of the law settled by Hon'ble Supreme Court in the case of Mohinder Singh VS, Union of India and Ors (Civil Appeal No,104 of 1993 decided on 14th January, 1993) which clearly states that opinion of a Medical Board can't be over-ruled by a higher formation without physical examination by a higher medical board.

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 Om Vs RAM

Av(ard and Ors. (Civil Appeal No.418 of 2012 decided on 10th December, 2014), 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., 9th May, 2011,

9. Accordingly OA is allowed. Applicant is granted disability pension with effect from the date of his invalidation at the rate of forty per cent to be

broad banded to fifty per cent for life.

10. However, as per the law settled by Hon'ble Apex Court in the case of Shiv Dam Vs. Union of India and Or [(2007) 9 SCC 274] the arrears are

restricted for a period of three years preceding the date of filing of the OA, i.e., 25th September, 2017. 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 till the actual

payment is made.

11. In view of the above, OA stands disposed of. Pending applications, if any, also stand disposed of.