
(2020) 01 AFT CK 0063

In the Armed Forces Tribunal

Case No : Original Application No. 2020 Of 2017, Miscellaneous Application No. 1531 Of 2017

R.K. Chand

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 29-01-2020

Acts Referred:

Citation : (2020) 01 AFT CK 0063

Hon'ble Judges : Sunita Gupta, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : R.K. Tripathi, Vijendra Singh Mahndiyan

Final Decision : Disposed Of

Judgement

1. Counsel for the applicant submits that he does not wish to file rejoinder.

Vide this OA, the applicant claims disability pension. Although the applicant was found suffering from two disabilities, counsel for the applicant states

that he confines his relief relating to the disability ID 'Primary Hypertension', which was assessed @ 30%.

Arguments heard. Vide separate order, OA stands disposed of.

M.A. No. 1531 of 2017:

Heard learned counsel for the parties on the point of delay. Delay of 402 days in filing the OA has been explained by the applicant. Keeping in view

the averments made in the MA and finding the same to be bonafide and in the light of the decision in Union of India and others Vs. Tarsem Singh

[2008 (8) SCC 6481, we allow the instant MA and condone the delay in filing the OA.

M.A. No. 1531 of 2017 stands disposed of accordingly.

O.A. No. 2020 of 2017:

2. The applicant, having been found medically and physically fit, was commissioned in the Indian Army on 13.12.1980. The applicant superannuated from service on 31.01.2013. At the time of his retirement, he was brought before the duly constituted Release Medical Board (RMB) conducted on

12.09.2012, which assessed the applicant's disabilities, namely, (a) PRIMARY HYPERTENSION g(. 30% for life and (b) LBBB WITH

NORMALLY SYSTOLIC FUNCTION 11-14% for life, with composite assessment 4 40% for life, but the same were held as 'neither attributable to

nor aggravated by military service (NANA)'.

3. Learned counsel for the applicant contended that the instant matter is squarely covered by a catena of decisions of the Honble Supreme Court

including Dharamvir Singh Vs. Union of India and Ors. (2013) 7 SCC 31,6 Union of India and Ors. Vs. Rajvir Singh (2015) 12 SCC 26 4and 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.

4. Per contra, learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, being an Expert

Body, found the disability ""Neither Attributable to Nor Aggravated by Military Service"".

5. During the course of hearing, counsel for the applicant submitted that although the applicant was found suffering from two disabilities, but he

confines his relief relating to the disability ID 'Primary Hypertension' only, which was assessed @ 30%.

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

In Dharamvir Singh's case (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, which is evidenced by the medical board proceedings indicating that onset of the disease was on 18.08.2012.

7. 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 29th 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.

8. In view of the settled law on attributability, we have noticed that the ReleaseMedical Board has denied attributability to military service to the

applicant, on the ground that this disease has originated in peace area and not in a field/CI Ops/HAA area. We are of the opinion that the stress and

strain of the military service is related to the basic nature of military duty and it cannot be compartmentalised to field/CI Ops/HAA area. Thus, we are

of the view that the benefit of doubt in this case goes in favour of the applicant. Therefore, in view of the law settled by the Honble Supreme Court in

Dharamuir Singh's case (supra), we are of the considered opinion that this

disease is to be considered as aggravated by military service.

9. In 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 disability pension from the date of his superannuation with regard to

Primary Hypertension 30% for life, which is to be broad- banded to 50% in light of the judgment of the Honble Supreme Court in Union of India and

Ors. Vs. Ram Avtar [Civil Appeal 418 of 2012¹ decided on 10th December, 2014.

10. Since the applicant has approached the Tribunal after a considerable delay, the arrears are restricted to only three years prior to the date of filing

of the present OA i.e. 24.11.2017.

11. Accordingly, 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 6% per annum.

12. The OA stands disposed of in the above terms with no order as to costs.