
(20) 06 AFT CK 0008

In the Armed Forces Tribunal

Case No : Original Application No. 164 Of 2018, Miscellaneous Application No. 114 Of 2018

R.N. Khajuria

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 19-06-20

Acts Referred:

Citation : (20) 06 AFT CK 0008

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

Bench : Division Bench

Advocate : R.K. Tripathi, Y.P. Singh

Final Decision : Dismissed

Judgement

M.A. No. 114/2018

1. For the reasons carved out in the Application, the delay of 6210 days in filing the Original Application is hereby condoned.

M.A. stands disposed off.

O.A. No. 164/2018

Aggrieved by the denial of disability pension, the applicant has filed the instant O.A seeking the following reliefs:

(i) To call for the records of the Release Medical Board proceeding for your lordships perusal.

(ii) To set aside the orders of the Second Appellate Committee on Pension issued vide Additional Directorate General Personnel Services letter No.

12656/IC23692/T-6/MP5(b) dated 27.02.2014, Annexure A1.

(iii) To direct the Respondents to pay the applicant the disability pension at the rate of 50% for life after broad banding.

(iv) To direct the Respondents to pay the arrears of disability pension with interest as deemed fit by your Lordships with effect from the next day of

release of the applicant.

(v) To grant any other relief as the Hon'ble members of the Tribunal may deem appropriate.

2. The brief facts, as averred by the learned counsel for both the parties are that the applicant was commissioned in the Indian Army on 21.12.1969

and retired from service on 01.01.2002 in low medical category after rendering more than 32 years of service. The Release Medical Board (RMB)

held at Military Hospital, Jalandhar Cantt on 20.11.2001 assessed his disabilities (i) 'IHD CABG DONE-411' @ 20%, (ii) 'ESSENTIAL

HYPERTENSION-401' Eg) 30%, (iii) 'NIDDM250' @ 20% and (iv) 'OBESITY-278'; composite @ 50% for two years. However, the RMB

opined that the disease of the applicant was neither attributable to nor aggravated by military service (NANA). The applicant's claim for grant of

disability pension was rejected by the respondents, hence the instant Original Application.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was commissioned in Army service and any disability not

recorded at the time of commission should be presumed to have been caused subsequently. The action of the respondents in denying disability pension

to the applicant is illegal. In this regard, he relied on the decision of the Honible Supreme Court in Dharamvir Singh v. Union of India and others,

(2013) 7 SCC 316 and submitted that for the purpose of determining attributability of the diseases to military service, what is material is whether the

disabilities were detected during the initial pre-commissioning medical tests and if no disability was detected at that time, then it is to be presumed that

the disabilities arose while in service, therefore, the disabilities of the applicant is to be considered as aggravated by service and he is entitled to

get disability pension @ 50% for two years and its broad banding.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that though the RMB had assessed the

disabilities of the applicant composite @ 50% for two years, it opined that the disabilities are NANA and reason/cause for first and second disabilities

are NANA and third and fourth disabilities are constitutional disorder not

connected with service. As such his claim for disability pension has rightly been rejected by the respondents. He submitted that the instant Original Application does not have any merit and the same is to be dismissed.

5. Having heard the learned counsel for both the parties and perused the records, the only question that needs to be answered is, whether the disabilities of the applicant are attributable to or aggravated by military service? exercise due to obesity, we are of the opinion that there is no ground

left with us to give any benefit of doubt to the applicant. We are therefore, in agreement with the opinion of the RMB that all the four disabilities are

not connected with service and hence, are NANA. In a similar case Hon'ble Supreme Court has dismissed the Civil Appeal (Diary No. 21017/2019)

Gyanendra Singh Versus Union of India & Others, arising out of Judgment and order dated 20.02.2019 passed by this Tribunal in O.A. No. 1656 of

2016.

8. In view of the above, the applicant has failed to make out a case for himself. Hence, this Original Application is liable to be dismissed, hence, dismissed.

9. No order as to costs.

10. Pending application(s), if any, also stand disposed off.

Pronounced in the open Court on 19th June 2020.