

(2020) 02 AFT CK 0017

In the Armed Forces Tribunal

Case No : Original Application No. 806 Of 2019, Miscellaneous Application No. 1433 Of 2019

Rohit Kapur

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 12-02-2020

Acts Referred:

Citation : (2020) 02 AFT CK 0017

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

Bench : Division Bench

Advocate : Ajai Bhalla, Rajeev Kumar

Final Decision : Disposed Of

Judgement

1. Counter affidavit has been filed.

Applicant does not wish to file rejoinder.

Arguments heard.

Vide separate order. OA stands disposed off.

MA 1433/2019

Vide this MA, the applicant seeks condonation of delay of 1181 days in filing the present OA. Keeping in view the averments made in the application

and finding the same to be bonafide and in the light of the decision in Union of India and others Vs. Tarsem Singh 12008 (8) SCC 6481 we allow the

instant MA and condone the delay of 1181 days in filing the OA.

M.A. No. 1433 of 2019 stands disposed of accordingly.

OA 806/2019

Having been found medically and physically fit, the applicant was commissioned

in the Indian Army on 13.06.1987 and was superannuated from service on 06.06.2015. Before proceeding on discharge, the applicant was subjected to Release Medical Board(RMB). The Release Medical Board on 03.12.2014 found that the applicant was suffering from disabilities namely (1) Primary Hypertension assessed @ 30% and (2) DM Type II assessed @ 20% with composite disability of 40% for life but treated 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 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.

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 Honble 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 29th June. 2017 sent to the Chief of Staff of Army. Navy and Air Force for implementation of the orders of Honble 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 40% for life,

which is to be broad banded to 50% 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 10th December, 2014.

7 In view of the fact that there is delay on the part of the applicant in approaching the Tribunal, therefore. arrears are restricted to three years prior to the filing of the OA which was filed on 10.05.2019.

8. The respondents are directed to release the arrears within a period of 4 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.

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