

(2020) 03 AFT CK 0047

In the Armed Forces Tribunal

Case No : Original Application No. 1324 Of 2017

Satendra Singh Tomar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0047

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

Bench : Division Bench

Advocate : J.P. Sharma, V.S. Tomar

Final Decision : Dismissed

Judgement

1. Aggrieved by the denial of disability pension vide order dated 17.07.2012, the applicant has filed the instant O.A seeking the following reliefs:

(a) To quash and set aside the impugned letter dated 17.07.2012 as Annexure A-1 Impugned order.

(b) Direct respondents to grant Disability Pension to the applicant by treating his disability ""SEIZURE DISORDER"" assessed as Â© 20% for life as

Aggravated by Naval Service as it has caused due to stress and strain of service, on the basis of Hontle Supreme Court in Dharamvir Singh Vs UOI

& Ors (Civil Appeal No 4949 of 2013) 2013 AIR SCW 4236 & Civil Appeal No 2904/2011 titled as UOI & Others Vs Rajbir Singh decided on

13.02.2015. And/or

(c) Direct Respondents to grant Disability Element of Disability Pension Â© 50% i.e. (i) disability Â© 20% and (ii) disability Â© 40% (composite Â©

50%) and further rounding off Â© 50% to Â© 75% wef 01.08.2012 to for life alongwith 10% interest in terms of GoI, MoD letter No 1(2)/97/D(Pen-

C) dated 31.01.2001 and & Civil Appeal No 418/2012 titled UOI & Ors Vs. Ram Avtar vide order dated 10.12.2014 And/or

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

2. The brief facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Indian Navy on 28.07.1997 and

retired from service on 31.07.2012 in low medical category after rendering more than 15 years of service on expiry of his terms of engagement. The

Release Medical Board (RMB) held at Base Hospital, Delhi Cantt on 11.05.2012 assessed his disabilities (i) 'SEIZURE DISORDER' @ 20 % for

life and (ii) 'SENSORY NEURAL HEARING LOSS (LT) EAR' @ 40% for life, composite @ 50% for life. However, the RMB opined that second

ID of the applicant was Attributable by Naval service whereas first ID was neither attributable to nor aggravated by Naval service (NANA). The

applicant is already in receipt of 40% for life disability element for his second disability i.e. 'Sensory Neural hearing Loss (Lt) Ear' as per PPO No.

09/97/B/D/0059/2013 dated 22.01.2013. A letter dated 23.04.2013 has also been sent to PCDA (Navy), Mumbai by the respondents to issue

Corrigendum PPO to the applicant by giving the benefit of broad banding of disability element from 40% to 50%. A copy of the letter has also been

sent to the applicant. Now the applicant has filed this 'Seizure Disorder'.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that the applicant is already in receipt of 40%

disability element for his second ID i.e. 'Sensory Neural Hearing Loss (Lt) Ear' being Attributable to service and his first disability i.e. 'Seizure

Disorder', assessed @ 20% for life is NANA. However, a letter dated 23.04.2013 has also been sent to PCDA (Navy), Mumbai to issue

Corrigendum PPO to the applicant to give the benefit of broad banding of disability element from 40% to 50% for life. A copy of the letter has also

been sent to the applicant. As such his claim for disability element for his first disability i.e. 'Seizure Disorder' 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 first

disability i.e. 'Seizure Disorder' of the applicant is attributable to or aggravated by military service?

6. We have noted that the applicant is already in receipt of 40% disability element for his second ID i.e. 'Sensory Neural hearing Loss (Lt) Ear' being

Attributable to service as per PPO No. 09/97/B/D/0059/2013 dated 22.01.2013 and a letter dated 23.04.2013 has also been sent to PCDA (Navy),

Mumbai by the respondents to issue Corrigendum PPO to the applicant by giving the benefit of broad banding of disability element from 40% to 50%.

The first disability of the applicant i.e. 'Seizure Disorder' is NANA.

7. The opinion of the same RMB with regard to second disease has been accepted selectively by the applicant because it is in his favour and for the

first disease i.e. 'Seizure Disorder' he is challenging the opinion of same RMB because it is against him. Medical boards are expert bodies and unless

there is a very very strong reason, it is not desirable to interfere with the findings of a Medical Board In this context, the Hon'ble Supreme Court in

Civil Appeal No 7672 of 2019 in Ex Cfn Narsingh Yadav vs Union of India & Ors it has again been held that certain disorders cannot be detected at

the time of recruitment and their subsequent manifestation does not entitle a person for disability pension unless there are very valid reasons and

strong medical evidence to dispute the opinion of Medical Board. Relevant part of the aforesaid judgment is as given below:-

21. Though, the opinion of the Medical Board is subject to judicial review but the Courts are not possessed of expertise to dispute such

report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of

the Review Medical Board

8. Additionally in judgment in Civil Appeal No 1837/2009, tilted Union of India & Another vs. Ex Rfn Ravinder Kumar, the Hon'ble Apex Court vide

its order dated 23.05.2012 had stated that :-

Opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension

brushing aside the opinion of the Medical Authorities, record the specific finding to the effect that the disability was neither attributable to

nor aggravated by military service, the court should not ignore such a finding for the reason that Medical Board is specialized authority

composed of expert medical doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability

due to military service and the conditions of service resulting in disablement of the individual"".

10. In view of the above, this Original Application is liable to be dismissed, hence, dismissed.

11. No order as to costs.

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

Pronounced in the open Court on 6th March, 2020.