

(20) 06 AFT CK 0047

In the Armed Forces Tribunal

Case No : Original Application No. 254 Of 2018, Miscellaneous Application No. 171 Of 2018

Shaji Sebastian

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 17-06-20

Acts Referred:

Citation : (20) 06 AFT CK 0047

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

Bench : Division Bench

Advocate : S. Punia, Harish V Shankar

Final Decision : Dismissed

Judgement

M.A. No. 171/2018

1. For the reasons carved out in the Application, the delay of 2095 days in filing the Original Application is hereby condoned.

M.A. stands disposed off.

O.A. No. 254/2018

Aggrieved by the impugned order dated 28.10.2011, denying him disability pension, the applicant has filed the instant O.A seeking the following reliefs:

(A) Set aside the impugned orders issued vide letter No R0/2703/706374/02/12/P&W(DP/RMB) dt 28.10.2011 & Air HQ letter No Air

HQ/99798/5/TBS/Appeal/AV-III(Appeals) dt. 11.12.2017;

(B) Direct the respondents to accept the disability of the applicant as attributable to and aggravated by service as well as consider the net assessment

qualifying for disability pension from Nil for life to 40% for life;

(C) Direct the respondents to give the benefits of rounding off of disability element from 40% for life to 50% for life and grant disability pension w.e.f.

01.3.2012 @ 50% for life in the light of law laid down by Hon'ble Supreme Court alongwith interest @ 12% per annum alongwith all consequential

benefits; and

(D) To award any other/further relief which this Honible Tribunal may deem fit and proper in the facts and circumstances of the case along with cost

of the application in favour of the applicant and against the respondents.

2. The brief facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Indian Air Force on 11.02.1986 and

was discharged from service w.e.f. 29.02.2012 after rendering 26 years of service in low medical category on account of ""disability ""PRIMARY

OPEN ANGLE GLAUCOMA BE WITH SEVERE"" ""VISUAL FIELD LOSS LE (OLD)"". The Release Medical Board (RMB)"" held at Air Force

Station Yelahanka on 05.04.2011 assessed his ""disability ""PRIMARY OPEN ANGLE GLAUCOMA BE WITH SEVERE"" ""VISUAL FIELD LOSS

LE (OLD)"" @ 40% for life. 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 vide order dated 28.10.2011 and his first appeal

was also rejected vide order dated 11.12.2017, hence the instant Original Application.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in the service and any disability was

medically fit when he was enrolled in the service and any disability been caused subsequently. The action of the respondents in denyingbeen 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

Hon'ble Supreme Court in Dharamvir Singh V. Union of India and others, (2013) 7 SCC 316 and submitted that 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 service, what is material is whether the disabilities were detected during the initial pre-commissioning medical tests and if no disability

during the initial pre-commissioning medical tests and if no disability 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 @ 40% for life and the same is to be rounded off to 50% for life.

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 @ 40% for life, it opined that the disability is NANA and onset of the disease is unaffected by service

conditions. 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?

6. We have noted that the applicant suffered the disability in February 2010. The reason/cause given by the Medical Board is as under :-

Onset is unaffected by service conditions, no history of an acute attack of service related worry, fatigue or illness, no evidence of undue mental of

physical stress occasioned by war service. Hence NA NA vide Para 35 GMO 2008 (Amendments) "".

7. As per available medical literature Glaucoma is genetically predisposed disease and there is no evidence otherwise to suggest that stress and strain

can cause it.

8. Thus, we do not find any valid ground to give any benefit of doubt to the applicant or interfere with the opinion of the RMB with ve agree with the

opinion of the RMB that disability of the applicant ""i.e. """"PRIMARY OPEN ANGLE GLAUCOMA BE WITH SEVERE""""9. Apart from it, in Civil

Appeal No 7672 of 2019 in Ex Cfn Narsingh Yadav vs Union of India & Ors it has again been held by the Hon'ble Supreme Court that any

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.

10. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly dismissed.

11. No order as to costs.

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

Pronounced in the open Court on 17th June 2020.