

(2020) 03 AFT CK 0003
In the Armed Forces Tribunal
Case No : Original Application No. 2070 Of 2018

Shilpa Rao

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 02-03-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2020) 03 AFT CK 0003

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

Bench : Division Bench

Advocate : Sumit Choudhary, Harish V Shankar

Final Decision : Disposed Of

Judgement

1. Casual Relationship of the Disability with Service conditions or otherwise

2. " , , , ,

Disability,"Attributable to service

(Y/N),"Aggravated by

service (Y/N),"Not connected with

service (Y/N),"Reason/Caused/Specific

condition and period in

service.

(i)WPW

Syndrome(OLD) Z

09.0","NO,NO,YES,"(a) Disease is

constitutional in nature.

(b) Detection of
disability in peace area
(265 SU/Jaisalmer/06
Feb 13).

(c) No delay in
diagnosis/ treatment.
WPW Syndrome is a
disorder of cardiac
rhythm and conduction:
this is because of
congenital aberrant
pathway between atria
and ventricle. Also
there was no history of
infection in the heart
which may lead to
aberrations in the heart.

NANA vide para 28 of
GMO 2008.

(ii) Mitral valve
Prolapsed with mild
Regurgitation (0 I 05,
Z 09.0",NO,NO,YES,"(a) Disease is
constitutional in nature.

(b) Detection of
disability in peace area
(265 SU/Jaisalmer/06
Feb 13).

(c) No delay in
diagnosis/treatment.

unless it is found that such disease could not be detected at the time of entry into military service. It has been held to the following effect:,,,,

In terms of Regulations contained in Appendix 11â?? the Armed Forces personnel are not to prove the conditions of entitlement of pension. They are,,,,

entitled to receive the benefit of doubt (Clause 9). In terms of Clause 14. once it is established that conditions of military service did not determine or,,,,

contribute to the onset of the disease, but influenced the subsequent course of the disease will fall for acceptance on the basis of aggravation. But if" ,,,,

the medial opinion finds that the disease could not have been detected on medical examination prior to acceptance of service, disease will not be" ,,,,

deemed to have arising during service [Rule 14(b)]. Thus if the Medical Bord has not opined that disease could not have been detected on medical ,,,,

examination prior to acceptance of service. opinion of the Medical Board that the disease is not attributable or aggravated by military service would be ,,,,

contrary to the statutory regulations and, thus, the report of the Medical Board would be suspectable and liable to be set aside. In that eventuality, it" ,,,,

will not be a case of setting aside the report of the Medical Board only for the reason that In exercising of power of judicial review, another view is" ,,,,

being taken but such report will be set aside for the reason that it does not satisfy the parameters specified in the Regulations and the instructions. ,,,,

Thus. in cases where the Medical Board does not disclose the reasons that disease could not have been detected on medical examination prior to ,,,,

acceptance of service, the cause of discharge from armed forces, will be deemed to be aggravated or attributable to military service." ,,,,

12. Relying on that judgement it was held that the applicant is entitled to disability pension. Following this judgement. coupled with the fact that there is ,,,,

no mention in the Release Medical Board that such disease could not be detected at the time of entering into military service so far as this disability is ,,,,

concerned, the applicant is entitled to the benefit of disability element of." ,,,,

13. The respondents are directed to implement the order and release the arrears within a period of four months from the date of receipt of a copy of ,,,,

this order, failing which the arrears shall carry interest at the rate of eight per cent per annum." ,,,,

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

15. Pronounced in open court on the 2nd day of March, 2020." ,,,,