

(2019) 10 AFT CK 0031

In the Armed Forces Tribunal

Case No : Original Application No. 305 Of 2017

Shyamendra Singh Chauhan

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0031

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

Bench : Division Bench

Advocate : Praveen Kumar, V.S. Tomar

Final Decision : Disposed Of

Judgement

1. The applicant by way of this OA seeks the following reliefs:

a) Quash and set aside the impugned letters dated 17 Oct 2016.

b) Direct Respondents to grant disability Pension @ 50% after rounding off from 30% for life as recommended by RMB to the applicant with effect

from 01 Apr 2009 i.e. the date of discharge from service with interest @12% till final payment is made.

c) Any other relief which the Hon7ble Tribunal may deem fit and proper in the fact and circumstances of the case.

2. Having been found medically and physically fit, the applicant, who joined the Indian Air Force on 211d March, 1989, was discharged from service

on 31st March, 2009, in low medical category ""CENTRAL SEROUS RETINOPATHY (Rt) EYE (Old) H 35, Z 09.0"" disability of which was

assessed at thirty per cent for life, treating it neither attributable to nor aggravated by military service, by Release Medical Board.

3. 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 Maria, (2015) 12 SCC 257. Further, the claim of the applicant is also supported by relevant rules.

4. 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 Military Service"".

5. We have heard learned counsel on both sides and perused the records. We have found that the Release Medical Board has denied attributability

and declared the disease as NANA only on the ground that ""It is degenerative in origin"". This cryptic sentence of Release Medical Board does not do

justice to the applicant because the disease has started after fifteen years of enrollment and the medical literature indicates that stress is a trigger

factor for this disease. Thus considering all issues we would like to extend benefit of doubt to the applicant and therefore his disability is to be

considered as aggravated by military service. Additionally the applicant will be eligible for the benefit of broad banding to fifty per cent for life.

6. In the light of the preceding paragraphs and essential parameters given aforesaid, the OA is partly allowed. We hereby set aside the impugned

order rejecting the claim of the applicant for disability pension and hold that his disability""CENTRAL SEROUS RETINOPATHY (Rt) EYE (Old) H

35, Z 09.0"" at the rate of thirty per cent is to be taken as aggravated by military service. His disability at the rate of thirty per cent for life, is to be

broad banded to fifty per cent for life 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. However, he is entitled to arrears of disability element of pension only from three years before the filing of this OA as per the

law settled by Hon'ble the Supreme Court on this matter in the case of Shiv DaSS VS, Union of India [(2007) 9 SCC 274.]The date of filing of the

OA is 10th February, 2017.The respondents are directed to implement this order 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.

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