
(2020) 02 AFT CK 0034

In the Armed Forces Tribunal

Case No : Original Application No. 513 Of 2019

Sudhir Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 17-02-2020

Acts Referred:

Citation : (2020) 02 AFT CK 0034

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

Bench : Division Bench

Advocate : Pardeep Singh Nandal, V.S. Kadian, D.K. Sabat

Final Decision : Disposed Of

Judgement

1. Counter affidavit has been filed. No rejoinder is to be filed as stated by the proxy counsel for the applicant.

Pleadings are thus complete.

Arguments heard. Vide separate order, OA stands disposed of.

The applicant, having been found medically and physically fit, was enrolled in the Indian Air Force on 03.11.1978. On attaining the age of

superannuation, he was discharged from service on 31.08.2018 in low medical category. At the time of his discharge, he was brought before the duly

constituted Release Medical Board (RMB), which assessed the applicant's disabilities, namely, (1) PRIMARY HYPERTENSION (ICD 110.0 OLD

Z09.0) @ 30% and (2) TYPE 2 DIABETES MELLITUS (ICD E 11) @ 20%, with composite assessment @ 40%, but the same were held as

'neither attributable to nor aggravated by military service (NANA)'.

2. Learned counsel for the applicant contended that the instant matter is squarely covered by a catena of decisions of the Honble 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 RMB, being an Expert

Body, found the disability ""Neither Attributable to Nor Aggravated by Military Service"".

4. Having heard learned counsel on both sides, we are of the view that the case in hand is squarely covered by the decisions referred to hereinabove.

In *Dharamvir Singh's* case (*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 Honble 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 29t1 June, 2017 sent to the Chief of Staff of Army, Navy and Air Force for implementation of the orders of Hon'ble

Supreme Court,has laid down the following essential parameters for allowing disability pension:

â??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 view of the settled law on attributability, we have noticed that the Release Medical Board has denied attributability to military service to the

applicant, on the ground that both the diseases have originated in peace area and not in a field/CI Ops/HAA area. We are of the opinion that the stress

and strain of the military service is related to the basic nature of military duty and it cannot be compartmentalised to field/CI Ops/HAA area. Thus, we

are of the view that the benefit of doubt in both the disabilities goes in favour of the applicant. Therefore, in view of the law settled by the Honble

Supreme Court in Dharamvir Singh's case (supra), we are of the considered opinion that both the diseases are to be considered as aggravated by

military service.

7. In 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 disability pension for both the disabilities from the date of his

superannuation @ 40% for life, which is to be broad-banded to 50% in light of the judgment of the Hon'ble Supreme Court in Union of India and Ors.

Vs. Ram Avtar [Civil Appeal 418 of 2012] decided on 10th December, 2014.

8. Accordingly, 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 6% per annum.

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