(2020) 01 AFT CK 0047

In the Armed Forces Tribunal

Case No : Original Application No. 921 Of 2019, Miscellaneous Application No. 1567 Of 2019

Sudhir Verma APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 10-01-2020

Acts Referred:

Citation : (2020) 01 AFT CK 0047

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

Bench : Division Bench

Advocate : Shakti Chand Jaidwal, K.K.Tyagi

Final Decision : Disposed Of

Judgement

1. Counter affidavit has already been filed by the respondents.

2. Rejoinder has also been filed.

3. Arguments heard.

4. Vide separate order, OA stands disposed off.

MA 1567/2019

1. Vide this MA. the applicant seeks condonation of delay of 1810 days in filing the present OA Keeping in view the averments made in the

application and finding the same to be bonafide and in the light of the decision in Union of India and others Vs. Tarsem Sinqh [2008 (8) SCC 648] we

allow the instant MA and condone the delay of 1810 days in filing the OA.

2. MA 1567/2019 stands disposed of accordingly.

OA 921/2019

3. Having been found medically and physically fit, the applicant was

commissioned in the Indian Air Force on 04.06.1982 and was discharged from

service on 30 04.2017. Before proceeding on discharge, the applicant was subjected to Release Medical Board (RMB). The Release Medical Board

found that the applicant was suffering from disability namely (i) PRIMARY HYPERTENSION (Old) 01.10. Z 09.0 and (ii) DM TYPE ll E-11"",

however, the disability was held neither attributable to nor aggravated by Air Force Service.

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

5. 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 Service"".

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

In Dharamvir Singh (supra) the Hon'ble 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.

7. The matter for implementation of orders of the Hon'ble 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 29th 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:

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.

8. We have noted that the RMB has denied attributability /aggravation of the disease only on the ground that the origin of the disease is while on

posting to a peace area and having no close time association with HAA/CI Ops. area. We feel that such a stand amounts to being unfair to the

applicant. The nature of military duty has inherent stress and strain within itself hence the stress and strain of military service can adversely affect a

soldier in peace area also. In view of the above, we are of the considered opinion that in this case, benefit of doubt goes in favour of applicant, hence

his disability namely ""(i) PRIMARY HYPERTENSION (Old) 1.10, Z 09.0 and (i) DM TYPE II E-11 composite disabilities @ 40% are considered as

aggravated by military service.

9. 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 pension from the date of his retirement at the rate of 40% for life,

which is to be broad banded to 50% for life in light of the judgment of the Hon.ble Supreme Court in Union of India and Ors. Vs Ram Avtar decided

on 10th December, 2014.

10. 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 six per cent per annum.

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