

(2019) 10 AFT CK 0061

In the Armed Forces Tribunal

Case No : Original Application No. 379 Of 2019, Miscellaneous Application No. 1486 Of 2019

Suleman

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 16-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0061

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

Bench : Division Bench

Advocate : Aditya Singh Puar, V.S.Tomar

Final Decision : Disposed Of

Judgement

1. Arguments heard

Vide separate order, OA stands disposed off,

MA 1486/2019

Vide this application, applicant seeks condonation of delay of 3 days in filing the counter affidavit.

In view of the averments made in the application, delay of 3 days in filing the counter affidavit. Same is taken on the record. MA stands disposed off.

0A379/2019

Heard learned counsel for both the parties.

Having been found medically and physically fit, the applicant was enrolled in Indian Army, Defence Service Corps (DSC) in the highest possible

medical category on 09.07.1996 and was superannuated from service on 31.10.2017. Being placed in low medical category P2 (P) w.e.f. 15.11.2014

for the diagnosis 'PRIMARY HYPERTENSION', he was brought before a duly constituted Release Medical Board which assessed his disability as

neither attributable to nor aggravated by military service with 30% disability and NIL disability qualifying for disability pension for life. His disability

element claim was adjudicated and rejected by the Adjudicating Authority on the findings of the Release Medical Board.

Before filing the present OA the applicant preferred first appeal, the same was rejected by the Appellate Committee on 06.07.2018. The second

appeal preferred to the Second Appellate Committee on Pension(SACP) is still pending with the SACP.

2. 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.

3 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",

4. 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.

5. 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.

6. In the 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 30%, which is to

be broad banded to fifty per cent in the light of the judgment of the Hon'ble Supreme

7. The respondents are directed to release the arrears within a period of six 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.

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