

(2019) 10 AFT CK 0012
In the Armed Forces Tribunal
Case No : Original Application No. 1624 Of 2016

Sunil Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0012

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

Bench : Division Bench

Advocate : Rajinder Kumar, S.R. Swain

Final Decision : Allowed

Judgement

1. This is an application filed by the applicani claiming the following reliefs:

- a) Calling for the records including the internal notes of the respondents based on which the applicant has been denied disability pension.
- b) Set aside the order of the respondents passed vide letter N0.1.268111C-31964 /T-8. /MP- 5(b) dated 27.07.2016.
- c) Direct the respondents to grant disability pension with the benefit of rounding off disability element to 50% to the applicant from the date of his retirement and grant hint disability pension accordingly for the future.
- d) Direct the respondents to pay the arrears of the disability pension to the applicant from the date of retirement with interest () 12% pa to be compounded quarterly.
- e) Issue any other direction as this Hon'ble Tribunal may deem fit in the facts of the case.

2. The applicant was commissioned in the Indian Army on 13tii June, 1978 and superannuated on 28th February, 2009 after putting in thirlythree years

of service. In the year 2000 the applicant was diagnosed with the disease "NIDDM Type, and placed on low medical category. This disease is the old name of "Diabetes Mellitus Type II". The Release Medical Board (RAAB), at the time of discharge of the applicant, assessed his disability NIDDM TYPE II at the rate of twenty per cent for life but opined it to be neither attributable to nor aggravated by military service resulting, in the tilin. of the present O.A.

3. The submission of learned counsel for the applicant is that since the, applicant was found mentally and physically fit at the time of commission and did not suffer from any disease, he is entitled to disability pension. In support of his contention, learned counsel has placed reliance on the decision of the Hon'ble Supreme Court in DIL in on Dharmvir Sinsh Vs. Union of India and Ors. [(2013) 7 SCC 3161.

4. On the contrary 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. Having heard learned counsel on both sides and after perusing the documents available on record, we are of the opinion that we need to answer following two questions, i.e. Firstly, is the disability of the applicant attributable to or aggravated by military service and secondly is the remarks given in RMB denying attributability sufficient to justify denial?

6. We have noted that the applicant was fully fit at the time of commission on 13th June, 1976. His disease, i.e. "NIDDM Type II", as per Release Medical Board, first started after about twenty four years after his commission during October, 2000. The Release Medical Board has denied attributability to military service on the ground that it is not connected and not affected by military service. We however find that this cryptic sentence 'Not connected with service' is not adequate to justify denial. Hence considering all issues, we are inclined to give benefit of doubt to the applicant and consider this disease as aggravated by military service in line with the law settled by the Hon'ble Supreme Court in the case of Dharainvir Sin812 (supra). Additionally we are of the opinion that the applicant is eligible for the benefit of broad banding to fifty per cent in light of the Hon'ble Supreme Court judgment in the case of Union Of India and OnS hiv Dass Vs. Union of

India and Ors. [(2007) 9 SCC 274]Vs. Ram Avtar, (Civil Appeal No 418 of 2012 decided on 10.12.2014),

7. In view of the aforesaid, the O.A. is allowed. The disability of the applicant 'NIDDM Type-II' is held to be attributable to military service. The

applicant is entitled to the benefit of broad banding from twenty per cent to fifty per cent for life from the date of discharge. However due to law of

limitations as settled by the Honorable Supreme Court in the case of Shiv Dais Vs. Union of India and Ors. 1(2007) 1 SCC 2741, the arrears of

disability element will be restricted to three years prior to the date of filing of this O.A. The date of filing of this O.A. is 30th November, 2016. This

order is to be implemented within 04 months of receipt of a certified copy of this order. Default will invite interest at the rate of eight per cent from

due date till actual date of payment.

8. No order as to costs.