
(2020) 02 AFT CK 0053

In the Armed Forces Tribunal

Case No : Original Application No. 577 Of 2018, Miscellaneous Application No. 324 Of 2020

Surender Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:

Citation : (2020) 02 AFT CK 0053

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

Bench : Division Bench

Advocate : J.P. Sharma, V.S. Kadian, Anil Gautam, B.N. Ashok

Final Decision : Disposed Of

Judgement

MA 445/2018

1. Heard learned counsel for the parties on the point of delay. Delay of 730 days in filing the OA has been explained by the applicant. Keeping in

view the averments made in the MA and finding the same to be bonafide and in the light of the decision in Union of India and others Vs. Tarsem

Singh [2008 (8) SCC 648], we allow the instant MA and condone the delay in filing the OA. However, in case the applicant succeeds in the matter, he

will be entitled to the arrears restricted to three years prior to the date of filing the OA.

MA stands disposed of accordingly.

OA 577/2018

The applicant, having been found medically and physically fit, was commissioned in the Indian Air Force on 14.11.1973. The applicant superannuated

on 31.7.2011. The Release Medical Board (RMB) assessed the applicant's

disabilities ,(i) Primary Hypertension (Old) @ 30%, (ii) Type II Diabetes

Mellitus (Old) @ 15-19% with composite degree of disabilities @ 40% for life but the disabilities 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. Rajbir 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 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 light of the preceding paragraphs and essential parameters given aforesaid, we have noticed that the RMB has denied attributability for both the diseases on the ground that the onset of both the diseases is in peace area and we are of the opinion that the stress and strain of military service cannot be compartmentalized to field/HAA/CI areas only. Stress and strain is intrinsic to military service and is applicable to peace areas also.

7. Hence we are of the opinion that both the disabilities are to be considered as aggravated to military service and he is entitled to disability element of pension from the date of his discharge @ 40% composite 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 [Civil Appeal 418 of 2012] decided on 10th December, 2014.

8. Accordingly, the respondents are directed to release the arrears 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. Since the applicant has come to this Tribunal after a considerable delay, hence the arrears are restricted to three years preceding to the date of filing of the OA i.e. 06.03.2018.

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