
(2019) 10 AFT CK 0050
In the Armed Forces Tribunal
Case No : Original Application No. 706 Of 2017

Vasid Ali	Vs	APPELLANT
Union Of India And Others		RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0050

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

Bench : Division Bench

Advocate : Charu Dalal, Ashok Chaitanya

Final Decision : Allowed

Judgement

1. Aggrieved by the impugned orders dated 30.05.2013, 31.07.2014 and 10.11.2016 denying him disability element of pension, the applicant has filed

the instant O.A. seeking the following reliefs:

(i) Setting aside of the impugned order dated 30.05.2013, 31.07.2014 and 10.11.2016 and direct the respondents to grant disability pensionary benefits

to the appellant and the arrears occurring therein.

(ii) Pass any other or further orders as this Hon hie Court may deem fit and proper in the Acts and circumstances of the case.

(iii) Award cost.

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Air Force on 29.09.2010 and was invalided out of service on

03.04.2013, in low medical category ApGp(P), after having served for approx 2 years. The Invaliding Medical Board (1MB) had assessed his

disability 'Other Non Organic psychosis' Â© 40% for life neither attributable to nor aggravated by military service (NANA). Disability pension claim

was rejected vide order dated 30.05.2013. Thereafter first and second appeals were also rejected vide order dated 31.07.2014 and 10.11.2016

respectively. Hence the instant O.A.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in service and any disability not recorded at

the time of recruitment should be presumed to have been caused subsequently. The action of the respondents in denying disability pension to the

applicant is illegal. In this regard, he relied on the decision of the Hon'ble Supreme Court in Dharamvir Singh v. Union of India and others (2013) 7

SCC 316, and submitted that for the purpose of determining attributability of the disease to military service, what is material is whether the disability

was detected during the initial enrolment medical board and if no disability was detected at that time, then it is to be presumed that the disability arose

while in service, therefore, the disability of the applicant is to be considered as aggravated by service and he is entitled to get disability pension @ 40%

and the same is to be broad banded to 50%.

4. On the other hand, learned counsel for the respondents submitted that though the IMB had assessed the disability of the applicant @ 40%, it opined

that the disabilities are NANA. As such his claim for disability pension has rightly been rejected by the respondents. He submitted that the instant

O.A. does not have any merit and the same is to be dismissed.

5. Having heard the learned counsel for both the parties and perused the records, the only question that needs to be answered is, whether the disability

of the applicant is attributable to or aggravated by military service?

6. We have noted that the only reason for which the disability 'Other Non Organic Psychosis' has been opined as NANA by the IMB and rejection

order dated 10.11.2016 is that the onset of disease was within two years of service and the disease had originated in peace area. However, on further

scrutiny, we have observed that the applicant's disability was first detected on 10.09.2012 i.e. about 18 days short of completing two years of service

and prior to that the applicant had successfully completed his training and was not suffering from any ailment. Additionally we do not agree with the

view that military stations in peace area do not have any stress and strain of military service. Hence we are inclined to give benefit of doubt in favour

of the applicant. Thus we are of the considered opinion that 'Other Non Organic

Psychosis' of the applicant is to be considered as aggravated by military service in line with the law settled on this matter by the Hon'ble Apex Court in the case of Dharafrivir Singh (supra). Additionally, the applicant will also be eligible for the benefit of rounding off to 50%, in terms of the decision of Hon'ble Supreme Court in Union of India and others v. Ram Avtar (Civil Appeal No 418 of 2012 dated 10.12.2014).

7. Resultantly, the O.A is allowed. The impugned orders are set aside. The applicant's disability 'Other Non Organic Psychosis' is to be considered as aggravated by military service. The applicant is entitled to disability pension @ 40% for life, which shall be broad banded to 50% for life from the date of his discharge from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of Shiv Dass v, Union of India and others (2007 (3) SLR 445), the arrears of disability pension will be restricted to three years before the date of filing of the instant O.A. The date of filing of this O.A is 20.04.2017. This order is to be implemented by the respondents within four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum.

8. No order as to costs.