
(2020) 03 AFT CK 0023

In the Armed Forces Tribunal

Case No : Original Application No. 522 Of 2016, Miscellaneous Application No. 527 Of 2019

Vinod Bhushan Arya

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0023

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

Bench : Division Bench

Advocate : S.M. Dalai, D. Windlesh

Final Decision : Dismissed

Judgement

M.A. 527 OF 2019

1. For the reasons carved out in the application, the delay of 8305 days in filing of Original Application is condoned. MA stands disposed of.

O.A. No. 522 of 2016

The applicant, Lt. Col. (Retd.) Vinod Bhushan Arya, through the medium of the instant Original Application is seeking the following reliefs:

(a) Quash the impugned order dated 22 Mar 2016 passed by Respondent No. 2 being arbitrary and perverse

(b) Set aside the opinion of Release Medical Board qua attributability aspect being contrary to the statutory provisions.

(c) Direct the respondents to grant disability pension to the applicant w.e.f. 1.1.2006 @80% but to be computed @100% after giving the benefit of

broad banding.

(d) Direct the respondents to pay interest @12% PA over the arrears.

(e) Pass any other or further order (s) which this Hon'ble Tribunal considers appropriate in the facts and circumstances of this case.

2. Briefly stated facts of the case are that the applicant was commissioned in Indian Army on 27.06.1965 and was pre-maturely retired on 10.09.1992

in Low Medical Category. At the time of retirement from service, the Release Medical Board (RMB)

3. Learned Counsel for the applicant pleaded that at the time of commission, the applicant was found mentally and physically fit for service in the

Indian Army and there is no note in the service documents that he was suffering from any disease at the time of commission in Army. The diseases of

the applicant were contracted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of

Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof.

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant i.e. 'ACUTE MYOCARDIAL INFARCTION ICD-

410' and (ii) 'DIABETES MELLITUS (NIDDM) â?" 250' Â©30% have been regarded as 50% and 30% respectively for two years by RMB.

However, since the disabilities were opined by RMB to be neither attributable to nor aggravated by military service his claim for grant of disability

pension has rightly been rejected. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board

proceedings. The only question which needs to be answered is straight and simple i.e. whether the disabilities of applicant are attributable to or

aggravated by military service?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of Dharamvir Singh Versus Union of

India & Others, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations,

Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same.

7. In view of the settled position of law on attributability we have noticed that the RMB has denied attributability on the ground that the diseases were

not connected with service and are constitutional in nature. However, we have

noticed that in the Release Medical Board the Specialist Doctor, a Medical Specialist has noted about 'ACUTE MYOCARDIAL INFARCTION ICD-410' No 7672 of 2019 in Ex Cfn Narsingh Yadav vs Union of India & Ors as under :-

8. However, as for as second disease i.e. 'DIABETES MELLITUS (NIDDM) â?" 250' is concerned we have again found that medical literature is full of evidence that Tobacco use can increase blood sugar levels and lead to insulin resistance. The more one smokes, the greater is the risk of diabetes. Thus since the applicant is a smoker we are of the opinion that we are not in a position to give him benefit of doubt and therefore we have no valid reason to interfere with the opinion of the Medical Board declaring his disease as NANA, not connected with military service. Thus in the sum and substance we agree with the opinion of RMB declaring both his disabilities as NANA.

9. In this context we would like to quote the opinion of Hon/Pie Supreme Court on the expertise of Medical Board in Civil Appeal No 7672 of 2019 in

Ex Cfn Narsingh Yadav vs Union of India & Ors as under :-

21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such

report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of

the Review Medical Board.

10. In view of the above, we are of the opinion that we have no valid reasons to interfere with the opinion of the RMB.

11. In view of the above, the Original Application No. 522 of 2016 is liable to be dismissed and is dismissed.

12. No order as to costs.

13. Pending application(s), if any, also stand disposed of.

Pronounced in the open court on 6th March, 2020.