
(2019) 09 AFT CK 0030

In the Armed Forces Tribunal

Case No : Original Application No. 20 Of 2018, Miscellaneous Application No. 2419 Of 2019

Vishnu Pradhan

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 17-09-2019

Acts Referred:

Citation : (2019) 09 AFT CK 0030

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

Bench : Division Bench

Advocate : Rajiv Manglik, Jyotsna Kaushik

Final Decision : Disposed Of

Judgement

MA 2419/2019

1. Vide this application, the respondents seeks restoration of their right to file counter affidavit. Although no sufficient ground has been disclosed in the application except stating that due to certain administrative reason, the reply could not be filed. In the interest of justice, application is allowed. Counter affidavit has been taken on record. Cost of Rs.5000/- has been deposited by the respondents. Receipt be placed on record.

OA 20/2018

Arguments heard. Vide separate order, OA stands disposed off.

Having been found medically and physically fit, the applicant, who was commissioned in the Corps of EME of the Army as Permanent Commissioned

Officer on 24th December 1982 and was superannuated from service on 31,1 January 2014 in low medical category. The Release Medical Board at

thetimeofsuperannuationassessed ID (i) Primary Hypertension (et 30% (ii)

Diabetes Mellitus Type-II @ 20% and (iii) Dyslipidemia (0 1-5% with composite percentage at 50% for life. However, net assessment was made @ 30% for life treating it neither attributable to nor aggravated by military service.

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 \ s 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 Military 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.

lii Dharamvir Singh (supra) the Honble 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 Honble

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 with regard to 'Primary Hypertension' from the date of his retirement @30% for life, which is to be broad banded t. 50% in the light of the judgment of the Honble Supreme Court in Union of India and Ors. Vs.

Ram Avtar decided on 10th December, 2014,

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 8% per annum.

8. Since the applicant has come to this Tribunal after considerable delay, hence the arrears are restricted to three years prior to the date of filing of the application (i.e. 02.01.2018).

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