

(20) 06 AFT CK 0005

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 1039 Of 2018, Miscellaneous Application No. 920 Of 2018

Suresh Chandra

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision: June 17, 0020

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

Bench: Division Bench

Advocate: V.S. Kadian, Y.P. Singh

Final Decision: Dismissed

Judgement

MA 920 OF 2018

1. For the reasons carved out in the application, the delay of 13556 days in filing of Original Application is condoned. MA 920 of 2018 stands disposed off.

OA 1039 OF 2018

2. The applicant, Ex. GNR Suresh Chandra, through the medium of the instant Original Application is seeking the following reliefs:

(a) Quash and set aside the impugned letter No.14348940X/LC/03/NE-5(C) dated 26.02.2018. And/or

(b) Direct respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant him disability pension with the benefit of broad banding/rounding off And/or

(c) Direct respondents to pay the due arrears of disability pension with interest @12% p.a. from the date of discharge with all the consequential benefits.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact circumstances of the case along with cost of the application in favour of the applicant and against the respondents.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in a medically fit condition and has been invalided out of service in

Low Medical Category, as such, his disability should be considered as attributable to and aggravated by military . service and he should be granted disability pension.

4. The Ld. Counsel for respondents has highlighted the opinion of Invaliding Medical Board, wherein the applicant's disease ""GRAND MAL

SEIZURE"" has been opined by the board as Neither Attributable to Nor Aggravated by military service and not related to service. He has drawn

attention to the disease manifesting within five months of enrolment. The learned counsel for the respondents claimed that since the disease is opined

as NANA by IMB, hence, the claim of disability pension of the applicant has rightly been rejected. He prayed for dismissal of the O.A.

5. We have heard the parties and perused the IMB. The question before us is straight and simple i.e. is the disease of the applicant attributable to or aggravated by Military service?

6. On careful scrutiny of the IMB records we have noticed that the First attack was on 25.10.19980 that is within a span of five months from the date

of enrolment of the applicant. It has been well established that 05 months period is too less to link this disease to stress and strain of military service.

Additionally, Guide to Medical Officers (Military Pensions), 2002 clearly states in Annexure I to Chapter IV, that this disease may not be detected at the time of enrolment.

7. Thus considering all issues and the fact that this disease has manifested within a short span of five months after enrolment, we therefore agree with

the opinion of the medical board that the disease is neither attributable to nor aggravated by military service (NANA).

8. In this context we would like to quote the relevant portion of Judgment of Hon'ble Supreme Court in Civil Appeal No 1837/2009, tilted Union of

India & Another vs. Ex Rfn Ravinder Kumar, the Hon'ble Apex Court vide its order dated 23.05.2012 had stated that:-

Opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension

brushing aside the opinion of the Medical Authorities, record the specific finding to the effect that the disability was neither attributable to

nor aggravated by military service, the court should not ignore such a finding for the reason that Medical Board is specialized authority

composed of expert medical doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability

due to military service and the conditions of service resulting in disablement of the individual".

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, the O.A. is liable to be dismissed. It is accordingly dismissed.

11. No order as to costs.

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

Pronounced in the open court on 17th June 2020.