

(20) 06 AFT CK 0014

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 1367 Of 2018

Satyendra Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision: June 19, 0020

Acts Referred:

- Navy (Pension) Regulation, 1964 - Section 10, 12(B)

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

Bench: Division Bench

Advocate: Ajit Kakkar, Jyotsana Kaushik

Final Decision: Disposed Of

Judgement

1. Aggrieved by the order of denial for grant of disability pension dated 08.05.2017, the applicant has filed the instant O.A seeking the following reliefs:

(a) To direct the respondents to place all medical records including medical boards and Release Medical Board conducted by the respondents for the

perusal of the court.

(b) To quash the letter dated 08.05.2017 denying disability pension to the applicant.

(c) To direct the respondents to consider his disability as Attributable/Aggravated by service and grant disability pension to the applicant from

01.08.2017 in view of the above mentioned circumstances and the settled law with regard to grant of disabilities pension.

(d) To grant the broad banding of disabilities pension as per the larger bench in Ex Sgt Girish Kumar O.A. No. 1439/2016 and UOI v Ram Avtar Civil

Appeal No. 418 of 2012.

(e) To direct the respondent to pay 12% interest on the arrears of pension and other benefits.

To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Navy on 31.07.2002 and was discharged from service on 31.07.2017

in low medical category after rendering 15 years service. The Release Medical Board (RMB) held at Military Hospital, Kolkata on 06.03.2017 assessed

his disability ""SEIZURE DISORDER ICD No. G-40.0"" @ 20% for life. However, the RMB opined that the disease of the applicant was neither

attributable to nor aggravated by military service (NANA). The applicant's claim for grant of disability pension was rejected by the respondents vide

order dated 08.05.2017. Hence the instant Original Application.

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

recorded at the time of enrolment should be presumed to have been caused subsequently. The action of the respondents in not granting 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 pre-commissioning medical tests 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 @ 200/c for life and the same is to be broad banded to 50% for life.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that though the RMB had assessed the

disability of the applicant @ 20% for life, it opined that the disability is NANA. As such, under the provision of Regulation 10 and 12B of Navy

(Pension) Regulation 1964, his claim for disability pension has rightly been rejected by the respondents. She submitted that the instant Original

Application 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 disability was first detected on 26.08.2008 after more than 6 years of service. We have also noticed that the only reason for

which the RMB has declared this disease as NANA is that it was not related to service. Considering all issues related to this disease, we are of the

considered opinion that the reasons given in RMB for declaring this disease as NANA is very brief and cryptic in nature. Since six years of service,

this disease was not present and thereafter when it is known that besides genetic factors injury to the head and certain types of infections may trigger

this disease, therefore, we would like to give the benefit of doubt in favour of the applicant. Thus we are of the considered opinion that the disability

'Seizure Disorder' is to be considered as aggravated by military service in line with the law settled on this matter by the Honible Apex Court in the

case of Dharamvir Singh (supra). Additionally, the applicant will also be eligible for the benefit of rounding off in terms of the decision of Hon'ble

Supreme Court in Union of India and others v. Rain 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 'Seizure Disorder' @ 20% for life, is to be considered

as aggravated by military service and his disability element of pension is to be rounded off from 20% to 50% for life from the date of discharge i.e.

01.08.2017. Ordered accordingly. To be implemented by the respondents within four months from the date of receipt of a copy of this order. Default

will invite interest @ 6% per annum.

8. No order as to costs.

9. Pending application(s), if any, also stand disposed off.

Pronounced in the open Court on 19th June 2020