

(20) 06 AFT CK 0020

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 1439 Of 2018, Miscellaneous Application No. 1452 Of 2018

Giraja Shankar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision: June 19, 0020

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

Bench: Division Bench

Advocate: V.S. Kadian, Sonali Tiwari

Final Decision: Dismissed

Judgement

M.A. No. 1452/2018

1. For the reasons carved out in the Application, the delay of 2038 days in filing the Original Application is hereby condoned.

M.A. stands disposed off.

O.A. No. 1439/2018

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

(a) Quash and set aside the impugned letter dated 13993408/Pen/DP RSMB (1st Appeal) dated 25.01.2014 and direct respondents to treat the ID (ii)

PRIMARY HYPERTENSION and ID (iii) ACL TEAR (RT) WITH GRADE 1/11 AND MCL SPRAIN (RT) KNEE JOINT of the applicant as

attributable to or aggravated by military service and grant disability element of pension by considering composite assessment of all the three IDs i.e. ID

(i) (already granted disability element) ID (ii) and ID (iii) assessed @ 60% along with the benefit of broad banding from 60% to 75% and/or

(b) 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.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

2. The brief facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Indian Army on 21.12.1995 and

retired from service on 31.12.2012 in low medical category after rendering more than 17 years of service. The Release Medical Board (RMB) held at

Base Hospital, Delhi Cantt on 03.07.2012 assessed his disabilities (i) 'PVD L4 L5 WITH LCS' @ 20% for life, (ii) PRIMARY HYPERTENSION'

30% for life and (iii) 'ACL TEAR (Rt) WITH GRADE 1/11 AND MCL SPRAIN (Rt) KNEE JOINT' 20% for life, composite assessment @ 60%

for life. However, the RMB opined that first ID of the applicant was Aggravated by military service whereas second and third IDs were neither

attributable to nor aggravated by military service (NANA). The applicant is already in receipt of disability element @ 20% for life for his first

disability i.e. 'PVD L4 L5 WITH LCS' as mentioned in the O.A. Now the applicant has filed this Original Application for grant of disability element of

his second and third disabilities.

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

recorded at the time of enrolment 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 Union of India & Ors vs. Rajbir Singh, Civil Appeal No. 2904/2011 decided on 13.02.2015 and submitted that for the purpose

of determining attributability of the disease to military service, what is material is whether the disabilities were detected during the initial medical tests

during recruitment and if no disability was detected at that time, then it is to be presumed that the disabilities arose while in service, therefore, second

and third disabilities of the applicant i.e. (ii) PRIMARY HYPERTENSION' and (iii) 'ACL TEAR (Rt) WITH GRADE 1/11 AND MCL SPRAIN

(Rt) KNEE JOINT' are to be considered as aggravated by service and he is entitled to get disability pension @ 60% for life, rounded off to 75% for life

4. On the other hand, learned counsel for the respondents submitted that though the RMB had assessed the disability of the applicant @ 30% for life, it opined that the disability is NANA due to onset on peace area. 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 second

and third disabilities of the i.e. (ii) PRIMARY HYPERTENSION' and (iii) 'ACL TEAR (Rt) WITH GRADE 1/11 AND MCL SPRAIN (Rt) KNEE

JOINT' of the applicant are attributable to or aggravated by military service?

6. We have noted that the applicant is already in receipt of disability element @ 20% for life for his first ID i.e. 'PVD L4 L5 WITH LCS' being

Aggravated to service. The second and third disabilities of the applicant i.e. (ii) PRIMARY HYPERTENSION' and (iii) 'ACL TEAR (Rt) WITH

GRADE 1/11 AND MCL SPRAIN (Rt) KNEE JOINT' are NANA.

7. The opinion of the same RMB with regard to first disease has been accepted selectively by the applicant because it is in his favour and for the

second and third disease i.e. (ii) PRIMARY HYPERTENSION' and (iii) 'ACL TEAR (Rt) WITH GRADE 1/11 AND MCL SPRAIN (Rt) KNEE

JOINT', he is challenging the opinion of same RMB because it is against him. Medical boards are expert bodies and unless there is a very very strong

reason, it is not desirable to interfere with the findings of a Medical Board.

8. In this context in Civil Appeal No 1837/2009, titled 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",

9. Additionally, the Hon'ble Supreme Court in Civil Appeal No 7672 of 2019 in Ex Cfn Narsingh Yadav vs Union of India & Ors it has again been held

that certain disorders cannot be detected at the time of recruitment and their subsequent manifestation does not entitle a person for disability pension

unless there are very valid reasons and strong medical evidence to dispute the opinion of Medical Board. Relevant part of the aforesaid judgment is as

given below:-

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. Thus, after considering all issues, we are of the opinion that the human body is complex and there is interplay between various organs of the body.

Once a disability sets in how it affects the course of health and how it is related to other disabilities which originate subsequently, is once again a

complex matter and must be left to medical experts. Therefore, we are of the view that there are no valid reasons for us to interfere with the opinion

of the Medical Board in this case. Hence, we are in agreement with the opinion of the RMB that second and third disabilities of the applicant i.e. (ii)

PRIMARY HYPERTENSION' and (iii) 'ACL TEAR (Rt) WITH GRADE 1/11 AND MCI SPRAIN (Rt) KNEE JOINT' are not connected with

service hence NANA.

11. In view of the above, this Original Application is liable to be dismissed, hence, dismissed.

12. No order as to costs.

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

Pronounced in the open Court on 19th June 2020.