

(20) 06 AFT CK 0026

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 1385 Of 2017

Sushil Kumar Verma

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: Rohit Pratap, Harish V. Shankar

Final Decision: Disposed Of

Judgement

1. Aggrieved by the impugned order dated 13.06.2017, denying him disability pension, the applicant has filed the instant O.A seeking the following

reliefs:

(a) To declare the action of respondents as unjust, arbitrary and illegal and

(b) To quash and set aside the letter dated 13.06.2017 and to direct the respondents to allow the disability pension from the time applicant was

released from service i.e. 31.12.1999, after 20 years of service.

(c) To direct the respondents to grant the benefit of rounding off disability of the applicant to 50% from 20% after rounding off in terms of letter dated

31 Jan 2001.

(d) To grant an interest @ 18% on delayed payment of the disability pension and

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

(f) Award cost.

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Air Force on 12.12.1979 and was discharged from service on

31.12.1999, in low medical category after having completed his terms of engagement i.e. 20 years of service. The Release Medical Board (RMB) has

assessed his disability IIHD (Inf Wall MI) Old V-67 (411)' @ 20% for two years neither attributable to nor aggravated by military service (NANA).

Disability pension claim of the applicant was rejected vide order dated 13.06.2017. Hence the instant O.A.

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

the time of recruitment 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 the case of Dharamvir Singh Vs 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 enrolment medical board 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 military service and he is entitled to get

disability pension @ 20% and the same is to be rounded off to 50%.

4. On the other hand, learned counsel for the respondents submitted that though the RMB had assessed the disability of the applicant @ 20% for two

years, it opined that the disabilities are NANA. The disease of the applicant is constitutional in nature and not connected with service. 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 disability

of the applicant is attributable to or aggravated by military service?

6. We have noted that the only reason for which the disability 'IHD (Inf Wall MI) Old V-67 (411)' has been opined as NANA by the RMB is that the

disease is constitutional in nature and not connected with service. However, on further scrutiny, we have observed that the applicant's disability was first detected in July 1996 i.e. after about 17 years of service and prior to that the applicant was not suffering from any ailment. It is known that stress and strain affects the course of this disease, hence the possibility of stress and strain of military service affecting the course of this disease can't be ruled out. Hence we are of the opinion that benefit of doubt goes in favour of the applicant. Thus we are of the considered opinion that the disability 'IHD (Inf Wall MI) Old V-67 (411)' is to be considered as aggravated by military service in line with the law settled on this matter by the Hon'ble Apex Court in the case of Dharamvir Singh (supra).

7. The disability 'IHD (Inf Wall MI) Old V-67 (411)' has been recommended by the Medical Board, in its wisdom, for two years only. Therefore, as per Ministry of Defence letter No. 1(2)/97/D (Pen-C) dated 31.01.2001, para 10, a fresh RSMB for life will have to be conducted by the respondents.

In this connection we are of the opinion that a Medical Board is the best agency to take a call on the duration after which the disease needs review.

Additionally, the opinion of Medical Board and the percentages of disability in the Medical Board have direct correlation with financial benefits

accruing out of a disability, hence, it is important that Medical Board reaches a final opinion. The respect for expertise of a Medical Board has been

clarified by Honble Supreme Court in its judgment dated 03.10.2019 in Civil Appeal No 7672 of 2019 in Ex Cfn Narsingh Yadav vs Union of India &

Ors. Decided on 03.10.2019. 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.

8. Resultantly, the O.A is partly allowed. The impugned order is set aside. The applicant's disability 'IHD (Inf Wall MI) Old V-67 (411)' is to be

considered as aggravated by military service. The applicant is entitled to disability element of disability pension @ 20% for two years from the date of

his discharge from service. However, the applicant has approached this Tribunal after a huge delay, hence, due to law of limitations settled by the

Hon'ble Supreme Court in the case of Union of India vs. Tarsem Singh reported in 2009 (1) AISL7 371 the arrears of disability element will be

restricted to three years before the date of filing of the instant O.A. The date of filing of this O.A is 09.08.2017. Thus, in sum and substance, the

applicant will not be entitled to any arrears on his disability element for the period of two years after his discharge. The applicant is already in receipt

of service element for life. The respondents are directed to conduct a Re-Survey Medical Board (RSMB) for the applicant and his future entitlement

to disability element will depend upon the outcome of the RSMB. Respondents are directed to give effect to this order within four months from the

date of receipt of a certified copy of this order. Default will invite interest @ 6% per annum.

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

Pronounced in the open Court on 19th June 2020.