

(20) 06 AFT CK 0029

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 946 Of 2018, Miscellaneous Application No. 819 Of 2018

Dinesh Kumar Varma

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, K.K. Tyagi

Final Decision: Disposed Of

Judgement

M.A. No. 819 of 2018

1. For the reasons carved out the Application the delay of 1500 days in filing the Original Application is condoned. MA No. 819 of 2018 stands disposed off.

O.A. No. 946 of 2018

The applicant, Lt. Col. Dinesh Kumar Varma (Retd.), through the medium of the instant Original Application is seeking the following reliefs:

(a) Quash and set aside the impugned letter No 13101/1C-48767K/Engrs/MP-6(C)/16/2015/Appeal/ AG/PS-4(Imp-11) dated 21.12.2015 and direct

the respondents to treat the disabilities of the applicant as attributable to or aggravated by military service and grant him disability element of pension with the benefit of broad banding.

(b) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date of retirement 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 along with cost of the application in favour of the applicant and against the respondents.

2. Briefly stated facts of the case are that the applicant was commissioned in Indian Army on 10.06.1989 and was discharged on 31.03.2014 in Low

Medical Category after attaining the age of superannuation. At the time of retirement from service, the Release Medical Board (RMB) held at Base

Hospital, Delhi Cantt. On 18.03.2014 assessed his disabilities (i) 'PRIMARY HYPERTENSION' @30% for life, and (ii) 'DM TYPE-II' @20% for

life, composite @40% for LIFE. The RMB opined the first disability i.e. 'PRIMARY HYPERTENSION' to be aggravated by military service and

second disability i.e. 'DM TYPE-II' to be neither attributable to nor aggravated (NANA) by military service. The Appeal of the applicant for grant of

disability element was rejected by the Army Headquarters vide their letter dated 21.12.2015 stating that both the diseases of the applicant were

considered as NANA. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that at the time of commission, the applicant was found mentally and physically fit for service in the

Indian Army and there is no note in the service documents that he was suffering from any disease at the time of commission in Army. The diseases of

the applicant were contracted during the service, hence it is aggravated by Military Service. The act of overruling the recommendations of RMB by

higher competent authority was wrong and should be set aside. He further submitted that in similar cases, Honble Apex Court and various Benches of

the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension @30% and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that first disability of the applicant i.e. (i) 'PRIMARY HYPERTENSION' has been

regarded @30% for life by RMB as aggravated by military service and the second disability i.e. 'DM TYPE-II' has been regarded @20% for life

by RMB as NANA. However, Army Headquarters has overruled RMB opinion and rejected the claim of the applicant on the ground that both the

disabilities of the applicant are neither attributable to nor aggravated by military service. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB proceedings. The

question which needs to be answered is straight and simple i.e. whether the Army Headquarters has power to overrule the opinion of the RMB

without conducting another Medical Board?

From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow

compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board)

while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere

stated that the Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline

the disability pension to the Applicant. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the

experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant

instructions and rules by the Director General of Army Medical Core.

7. In view of above we set aside the decision of Army Headquarters for rejecting the claim of the applicant for grant of disability pension and are of

the considered opinion that the applicant was entitled to disability pension for first disease i.e. 'PRIMARY HYPERTENSION' @30% for life from

the date of discharge. We, however, agree with the opinion of RMB in respect of the second disease i.e. 'DM TYPE -II' declaring it NANA.

8. In view of the above, the Original Application No. 946 of 2018 deserves to be partly allowed, hence, partly allowed. The impugned order dated

21.12.2015, enclosed at Annexure No. A-1 of the Original Application, are set aside. The first disability of the applicant 'PRIMARY

HYPERTENSION' is to be considered as aggravated by military service. However considering the fact that the O.A. has been admitted after

condoning the delay and laches, therefore, in view of the decision of the Hon'ble Supreme Court in Union of India Vs. Tarsem Singh, reported in 2009

(1) AISU 371, the respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life

w.e.f. three years preceding the date of filing this Original Application. The date of filing of the O.A. is 09.05.2018. Respondents are directed to give

effect to the order within four months from the date of receipt of a certified copy of this order.

9. No order as to costs.

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

Pronounced in the open court on 19th June 2020.