

(20) 06 AFT CK 0038

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 783 Of 2018

Umesh Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision: June 19, 0020

Acts Referred:

- Armed Forces Tribunal Act, 2007 - Section 14

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

Bench: Division Bench

Advocate: SP Sharma, VS Kadian, Arvind Patel

Final Decision: Disposed Of

Judgement

1. Being aggrieved by denial of disability pension, the applicant has filed the present Original Application under Section 14 of the Armed Forces

Tribunal Act, 2007 wherein he has sought the following reliefs:-

(a) Quash and set aside the impugned letter No. PN/0134/DP/878/2""d/17 dated 29.01.2018. And/or

(b) Direct respondents to treat the disability of the applicant as attributable to or aggravated by militolly service and grant him disability element of pension, and benefit of rounding off to 50%. And/or

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

(d) 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. Brief facts of the case are that the applicant was enrolled in the Indian Navy on 10.07.1991 and was discharged from service on 31.07.2006 in low medical category. The Release Medical Board (RMB) held at 'NHS, Sanjivani on 28.03.2006 assessed his disability, 'Solitary Pulmonary Nodule (Lt Upper Lobe Apico Posterior Segment) ICD 98.9' @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 14.09.2016. Hence the instant Original Application.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in Air Force 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 denying disability pension to the applicant is illegal. In this regard, he relied on the decisions of the Hon'ble Supreme Court in Dharamvir Singh v. Union of India and others, (2013) 7 SCC 316 and Union of India & Another Versus Rajbir Singh (Civil Appeal No. 2904 of 2011, date of decision 13.02.2015) and submitted that for the purpose of determining attributability of the disease to military service, what is material is whether the disability was detected at the time of enrolment 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 attributable to or aggravated by service and he is entitled to get disability pension @30% and the same is to be broad banded to 50%.

4. On the other hand, learned counsel for the respondents submitted that though the RMB had assessed disability of the applicant @20% for life, it has opined that the disability is neither attributable to nor aggravated by military service (NANA). Moreover, the applicant preferred first and second appeals against the rejection of his disability pension but the same were also rejected by the competent authorities vide their orders dated 07.04.2016 and 29.01.2018 respectively on the ground that the disability. He pleaded for dismissal of the OA.

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 'Solitary Pulmonary Nodule (Lt Upper Lobe Apico Posterior Segment) ICD 98.9' has

been opined as NANA by the RMB is that the disability is not connected with military service. The disability was first detected on 10.09.2003

whereas the applicant was enrolled in Indian Navy on 10.07.1991 i.e. after about more than 12 years of service. We are therefore of the considered

opinion that the reasons given in RMB for declaring the disease as NANA is very brief and cryptic in nature and does not meet the ends of justice.

Moreover, medical literature states that the disease 'Solitary Pulmonary Nodule (Lt Upper Lobe Apico Posterior Segment) ICD 98.9' is a single

abnormality in the Lung that is smaller than 3 cm in diameter. It is surrounded by normal Lung tissue and is not associated with any other abnormality

in Lung. There can be multiple reasons for its creation including infection caused by Tuberculosis bacteria or certain types of Fungi. The applicant has

served for more than 12 years of service before he suffered from this disability and therefore, we would like to extend the benefit of doubt in favour

of the applicant. Thus, we are of the considered opinion that the disability 'Solitary Pulmonary Nodule (Lt Upper Lobe Apico Posterior Segment) ICD

98.9' 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). Additionally, the applicant will also be eligible for the benefit of Broad Banding to 50 % for life with effect from the date of

discharge, in terms of the decision of Hon/131e Supreme Court in Union of India and others V. Ram Avtar (Civil Appeal No 418 of 2012 dated

10.12.2014).

7. However, considering the fact that the O.A has been admitted after condoning the huge delay and laches, therefore, in view of the decision of the

Hon'ble Supreme Court in Union of India and Others Vs. Tarsem Singh 12008 (8) SCC 648], the financial benefits will however be restricted to three

years before the date of filing this Original Application, i.e. 11.04.2018.

8. Resultantly, the O.A. is allowed. The impugned orders are set aside. The applicant's disability 'Solitary Pulmonary Nodule (Lt Upper Lobe Apico

Posterior Segment) ICD 98.9' 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, three years prior to filing the Original Application. The Original Application has been filed on 11.04.2018. 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 till

actual date of payment.

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.