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**(20) 06 AFT CK 0039**

**Armed Forces Tribunal Principal Bench, New Delhi**

**Case No:** Original Application No. 935 Of 2018

Vijay Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

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**Date of Decision:** June 19, 0020

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

**Bench:** Division Bench

**Advocate:** S.M. Dalal, S.D. Windlesh

**Final Decision:** Disposed Of

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### **Judgement**

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

(a) Set aside the opinion of Invaliding Medical Board dated 03 Dec 1998 qua attributability aspect and hold that the disability of the applicant is

attributable to/aggravated by military service.

(b) Quash the order of PCDA (P) Allahabad dated 31 Mar/03 Apr 2000, being arbitrary and illegal.

(c) Direct the respondents to grant disability pension to the applicant w.e.f. 29.12.1998 with further direction to give benefit of broad banding by

rounding off disability element from 50% to 75%.

(d) Grant interest @ 12% PA over the arrears.

(e) Pass any other or further order(s) which this Hon'ble Tribunal considers appropriate in the facts and circumstances of this case.

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Army on 04.10.1975 and was invalided out from service on

28.12.1998, in low medical category after having rendered more than 23 years of service. The Invaliding Medical Board (IMB) has assessed his

disability ""AFFECTIVE PSYCHOSIS (DEPRESSION) ICD 296"" @ 50% for five years and considered it neither attributable to nor aggravated by

military service (NANA). Disability pension claim of the applicant was rejected by the respondents vide order dated 05.05.2000 and his first appeal

was also rejected vide order dated 06.03.2018. Hence the instant O.A.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in the 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 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 recruitment 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 @ 50%.

4. Learned counsel for the respondents submitted that though the IMB had assessed the disability of the applicant @ 50% for five years, it opined that

the disability is NANA 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. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of Dharamvir Singh Versus Union of

India & Others, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations,

Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same.

7. In view of the settled position of law on attributability, we find that the IMB has denied attributability to the applicant only by endorsing that the

disability ""AFFECTIVE PSYCHOSIS (DEPRESSION) ICD 296"" is neither attributable to nor aggravated (NANA) by service because it is not

connected with service. We find this explanation ""Not connected with service"" to be cryptic and inadequate to justify denial. The applicant had this

disease for the first time after 22 years of service in the year 1998. We are therefore of the considered opinion that the benefit of doubt in these

circumstances should be given to the applicant in view of Dharamvir Singh vs Union of India & Ors (supra) and the disability of the applicant should

be considered as aggravated by military service.

8. The disability ""AFFECTIVE PSYCHOSIS (DEPRESSION) ICD 296"" has been recommended by the Medical Board, in its wisdom, for five 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 Hon'ble 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..

9. In view of the above, the Original Application deserves to be partly allowed, hence partly allowed. The impugned orders are set aside. The disability

of the applicant i.e. ""AFFECTIVE PSYCHOSIS (DEPRESSION) ICD 296"" @ 50% is to be considered as aggravated by military service for five

years and applicant is eligible for disability element from the date of discharge i.e. 28.12.1998. 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 Vs. Tarsem

Singh, reported in 2009 (1) AISLJ 371, the applicant is not entitled to any arrears for disability element for five years period of IMB after discharge.

The applicant is already in receipt of service element after his discharge. His further entitlement to disability element will depend on the outcome of

the RSMB, which is to be conducted by the respondents. The respondents are directed to give effect to this order within a period of four months from

the date of receipt of a certified copy of this order.

10. No order as to costs.

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

Pronounced in the open Court on 19th June 2020.