

SEE RULE 102(1))
ARMED FORCES TRIBUNAL, KOLKATA BENCH
O. A. NO.69/2015
THIS 17th DAY OF MAY, 2016

CORAM

HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT(S)

Ex-AC Ashok Kumar Ghosh
 S/o Sri Anil Kumar Ghosh.
 Residing at Netaji Subhas Road
 P.O. – Malda, P.S.- English Bazar,
 Dist.-Malda, State – W.B.
 Pin – 732 101.

-versus-

RESPONDENT(S)

1. The Union of India,
 represented through Secretary,
 Ministry of Defence, South Block
 New Delhi, Pin -110 011.
2. Chief of Air Staff,
 Indian Air force, Air Headquarters
 Vayu Bhawan
 New Delhi – 110 106.
3. Air Officer Commanding In Chief,
 South Western Air Comand
 Gandhinagar, Gujrat – 382010.
4. Commanding Officer,
 IAF, No. 254, Signal Unit, Air Force,
 Jodhpur, Rajasthan – 342 011.
5. OI/C. PEN & WEL WG (DP)
 Air Force Record Office,
 Vayu Sena Abhilekh Karyalaya, Subroto Park,
 New Delhi -110 010.
6. OI/C MEDICAL BOARD, Base Hospital,
 Delhi Cantt. New Delhi – 110 010.

For the petitioner(s) : Mr. Subhash Chandra Basu, Advocate

For the respondent(s) : Mr. Sudipto Panda, Advocate

ORDER

PER HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)

1. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 seeking relief of disability pension with interest after setting aside the impugned order dated 21.04.2015.
2. The facts of this case are lying in a narrow compass. The applicant was enrolled in the Indian Air Force as Airman on 26.05.1975 after having successfully completed physical/medical test and has been invalidated out of service as per the opinion of the Invalidating Medical Board (in short IMB) wherein it has been found that the applicant was suffering from Generalised Epilepsy (Idopathic) and his disability was assessed 30%, neither attributable to nor aggravated by military service. Applicant was discharged from service vide order dated 08.06.1977. On the basis of the above report applicant's claim for grant of disability pension has been rejected by CDA(P) Allahabad vide its order dated 19.8.1977. However, the respondents' authority vide its letter dated 21.03.2007 granted convening of Appeal Medical Board. Said AMB also considered applicant's disability neither attributable to nor aggravated by service. Accordingly, applicant's second appeal was rejected on 08.05.2008. Being aggrieved by such rejection, the applicant had approached this Tribunal by filing O.A. 75 of 2013, which was disposed of vide order dated 15.09.2014 with a direction to the respondents to re-consider the case of the applicant in the light of the decisions of the Hon'ble Supreme Court. While re-considering the

applicant's case, the respondents authority rejected the applicant's claim vide impugned order dated 21.04.2015 inter alia on the ground that the Ministry of Defence has not evolved any policy on the Hon'ble Apex Court's decisions and therefore the case of the applicant and other similar cases are dealt with in accordance with the Government policy in vogue. Hence the O.A.

3. We have heard the Id. counsel for both the parties and perused records.

4. It is not in dispute that applicant's claim was rejected on the basis of the opinion of the IMB as well as AMB, according to which his disability was neither attributable to nor aggravated by military service with 30 per cent disability. It is also not in dispute that at the time of enrolment into the Air Force Service the applicant was medically examined and was found fit as per prescribed medical standard and was not suffering from any disease including the disease in question. The Hon'ble Supreme Court has settled the law in several cases including - Union of India Vs. Rajbir Singh [Civil Appeal No. 2904 of 2011]; Dharamvir Singh Vs. Union of India & Ors [2013 Vol.VII SCC 316], Veer Pal Singh vs Union of India & Ors. [(2013) 8 SCC 83] ; Union of India Vs. Angad Singh Titaria [2015 SCC OnLine SC 181] - that in such situation the disability has to be held as attributable to and aggravated by military service. The respondents are also not in disputing the above aspect of the matter. However, they rejected the applicant's case only on the ground that Ministry of Defence has not issued any circular on the basis of the law laid down by the Hon'ble Supreme Court. On the face, the order

impugned has been passed in utter violation of the law laid down by the Hon'ble Apex Court. Moreover, the Hon'ble Apex Court has laid down the law based on the interpretation of the Rules framed by the MOD, which is binding on the respondents. In such circumstances the order impugned rejecting applicant's claim is not sustainable in the eye of law and deserves to be set aside.

5. For the reasons mentioned above, the application deserves to be and is hereby allowed. The applicant is entitled for grant of disability element of pension from the date of his discharge i.e. 08.06.1977 on the basis of applicant's disability as 30 per cent which is to be rounded off as 50 per cent in accordance with the Government Circulator. The amount of arrears shall carry interest at the rate of 06 per cent per annum. The entire exercise has to be completed within two months from the date of receipt of the copy of this order. No order as to costs.

(Lt Gen Gautam Moorthy)
Member (Administrative)

(Justice N.K. Agarwal)
Member (Judicial)