(2019) 10 AFT CK 0037

In the Armed Forces Tribunal

Case No : Original Application No. 1327 Of 2017

Aftab Khan APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:
Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2019) 10 AFT CK 0037

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

Bench : Division Bench

Advocate : O.S. Punia, K.K. Tyagi

Final Decision : Allowed

Judgement

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

(i) Set aside the impugned letter dated 04.09.2009;

(ii) Direct the respondents to consider the disability of the applicant as attributable to and aggravated by service as well as consider the net assessment

qualifying for disability pension from Nil for life to 30% for life; and

(iii) Direct the respondents to give the benefits of rounding off of disability from 30% for life to 50% for life and grant disability pension with effect

from 01.07.2009 Cd). 50% for life in the light of law laid down by Hon'ble Supreme Court along with interest @ 12% per annum along with all

consequential benefits.

2. Briefly stated facts of the case are that the applicant was commissioned as an officer in the Indian Army on 13.06.1976. He superannuated from

service on 30.06.2009 in the low medical category S1H1A1P2E1 (Permanent). At the time of retirement from service, a Release Medical Board

(RMB) was conducted, which assessed his disability 'PRIMARY HYPERTENSION'@30Â°/0 for life. The RMB opined that the disability is neither

attributable to nor aggravated by military service (NANA). Accordingly, the claim of the applicant for disability pension preferred by the applicant was

rejected by respondents. Thereupon, the applicant filed a first appeal on 07.11.2009, which was also rejected by the competent authority. It is in this

perspective that the applicant has preferred the present O.A.

3. Learned counsel for the applicant submitted that at the time of enrolment, the applicant was found fit in all respects for service in the Army and

there is no note in the service documents that he was suffering from any disease at the time of enrolment. The disease of the applicant was contacted

during the service, hence it is attributable to and aggravated by Military Service. The learned counsel further submitted that the applicant is entitled to

get his disability pension rounded off to 50% from the date of his discharge from service.

4. On the other hand, learned counsel for the respondents contended that disability of the applicant @ 30% for life has been regarded as NANA by

the RMB, hence he is not entitled to disability pension. He pleaded for dismissal of the O.A.

5. Having heard the learned counsel for both the parties and gone through the RMB proceedings as well as the records, the only question that requires

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 is no more RES INTEGRA. It has already been settled by the Hon'ble Supreme Court Din haramvir Singh

V. Union of India and others (2013) 7 SCC 316. In this case, the Honible Supreme Court had taken into consideration the provisions of the Pensions

Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and held that a member is presumed in sound physical and

mental condition upon entering service if there is no note or record at the time of entrance and in the event of his subsequently being discharged from

service on medical grounds any deterioration in his health is to be presumed due to service. It further held that if medical opinion holds that the disease

could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during

service, the Medical Board is required to state the reasons and it is mandatory for the Medical Board to follow the guidelines laid down in the relevant

Guide to Medical Officers.

7. In view of the settled legal position on attributability, we find that the RMB has denied attributability to the applicant stating that the disability

'Primary Hypertension' is neither attributable to nor aggravated (NANA) only on the ground that the disability developed in peace station and not in a

Fd/HAA/CI area. We are of the view that this finding of the RMB is not convincing and does not reflect the complete truth on this matter. Peace

Stations have their own pressures of rigorous military training and associated stress and strain of military service. The applicant was commissioned in

the Army on 13.06.1976 and the disability developed after more than 29 years of service i.e. in September 2005. 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 (supra) and the disability of the

applicant should be considered as aggravated by military service.

8. The law on the point of rounding off of disability pension is no more res Integra, in view of decision in Union of India and others v. Ram Avtar (C.A

No 418 of 2012 decided on 10.12.2014). Thus in light of this judgment, the disability element of the applicant Â©30% shall stand rounded off to 50%

for life.

9. The claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. As

such, in view of the decision on limitations in Shiv Dass v. Union of India and others (2007 (3) SLR 445,) the benefit of arrears of disability element of

the applicant will be restricted to three preceding years from the date of filing of the O.A.

10. In light of above, the instant 0.A deserves to be allowed, hence allowed. The impugned order dated 04.09.2009 is set aside. The disability of the

applicant 'Primary Hypertension' is to be considered as aggravated by military service. The respondents are directed to grant disability element to the

applicant at the broad banded rate of 50% for life. However the arrears of disability element will be restricted to three years preceding the date of

filing the instant O.A. The date of filing this 0.A is 31.07.2017. The respondents are directed to give effect to this order within four months from the

date of receipt of a copy of this order. Default will invite interest @ 9% per annum till actual payment.

11. No order as to costs.

