

(20) 06 AFT CK 0010

In the Armed Forces Tribunal

Case No : Original Application No. 373 Of 2018

Ambika Sreekala

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 19-06-20

Acts Referred:

Citation : (20) 06 AFT CK 0010

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

Bench : Division Bench

Advocate : Rajiv Manglik, V. Pattabhiram

Final Decision : Disposed Of

Judgement

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

- (a) To declare the action of the respondents as unjust, arbitrary and illegal; and
- (b) To quash and set aside order dated 12 Dec 2017, 03 May 2017 and 06 May 2016; and
- (c) To direct the respondents to grant the disability pension to the applicant after granting the benefit of rounding of disability of the applicant from 70% to 75% and disability pension comprising of disability element and service element after rounding off the disability to 75% in terms of letter dated 31 Jan 2001; and
- (d) To direct the respondent to commute the disability element of the disability pension and pay the arrears of the disability element of the disability pension by restricting the same to the period of three years prior to the date of filing of the OA; and
- (e) To grant an interest of 18% on the arrears; and

(f) To award exemplary costs upon the Respondents in the facts and circumstances of the record; and

(g) To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.

2. The facts of the case, in brief, are that the applicant was commissioned as Military Nursing Officer on 01.01.1990 and retired from service on

30.04.2015 in low medical category after rendering more than 25 years of service. The Release Medical Board (RMB) assessed her disabilities (i)

'HYPERTENSION' @ 30 for life, (ii) 'MULTINODULAR GOITRE' @ 20% for life, (III) 'VITAMIN-D DEFICIENCY' @ 15-19% for life, (iv)

'PRE DIABETES' @ 15-19% for life and (v) 'ACL TEAR (RT) KNEE (OPTD)' @ 20% for life, composite assessment for all the disabilities was

@ 75% for life and ID (i) to (iv) of the applicant were considered as neither attributable to nor aggravated by military service (NANA) whereas fifth

ID i.e. 'ACL TEAR (RT) KNEE (OPTD)' was considered as Aggravated to service. Her claim for disability pension was rejected vide letter dated

06.05.2016. Her first and second appeals were also rejected by the respondents vide order dated 03.05.2017 and 12.12.2017 respectively. Hence the

instant O.A.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when she was commissioned in military nursing service and no

disability was recorded at the time of her commissioning. Therefore, all disabilities of the applicant have been acquired during military nursing service.

He further submitted that though the RMB has regarded her disability of 'ACL Tear' as aggravated but the same has been overruled by a higher

competent authority. In this regard, he relied on the decision of the Hon'ble Supreme Court in Dharamvir Singh v. Union of India and others (2013) 7

SCC 316 and pleaded for all the disabilities i.e. ID (i) to (iv) to be considered attributable to or aggravated by military nursing service. He prayed for

disability pension @ 70%, broad banded to 75% for life.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that though the RMB had assessed the

disabilities of the applicant @ 70% composite, it opined that the disabilities i.e. ID (i) to (iv) are NANA and fifth ID i.e. 'ACL TEAR (RT) KNEE

(OPTD)' is aggravated to service but the applicant suffered the injury while she

was on leave at her home station, therefore this ID is also considered as NANA by the respondents and onset of all the disabilities was in peace area. As such her claim for disability pension has rightly been rejected by the respondents. He submitted that the instant Original Application does not have any merit and the same is to be dismissed.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records. The question which needs to be answered is straight and simple i.e. Whether the disabilities of the applicant i.e. ID

(i) to (iv) are attributable to or aggravated by Military Service?

7. As far as all other disabilities are concerned we are of the opinion that human body is complex and has huge inter-related issues. Thus the interconnectivity of various health markers is best understood by medical experts, hence we don't find any valid reasons to question the opinion of RMB declaring all other diseases of the applicant as NANA.

8. Thus in sum and substance we set aside the decision of competent authority overruling the opinion of RMB without physical examination of applicant by a higher Medical Board and restore the original opinion and findings of RMB.

9. Resultantly, the O.A. deserves to be partly allowed, hence partly allowed. The impugned orders are set aside and the original opinion of RMB is

restored. The applicant's disability IACL TEAR (RT) KNEE (OPTD)' is to be considered as aggravated by military service in line with RMB

recommendations and all other disabilities of the applicant are to be treated as NANA in line with original RMB recommendations. The applicant is

entitled to disability element of disability pension @ 20% for life, which shall be rounded off to 50% for life from the date of her discharge i.e.

01.05.2015. 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.

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.