

(2019) 10 AFT CK 0021
In the Armed Forces Tribunal
Case No : Original Application No. 1109 Of 2017

Anil Mathur

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0021

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

Bench : Division Bench

Advocate : J.R. Rana, VS. Toma

Final Decision : Allowed

Judgement

1. Aggrieved by the impugned order dated 08.02.2003, denying him disability element of pension, the applicant has filed the instant OA seeking the

following reliefs:

(a) To declare the action of the respondents as unjust, arbitrary and illegal; and

(b) To quash the respondents letter No 13008/1C-23166/ARTY/MP-6B/28/R/2003/AGPS-4(d) dated 08 Feb 2003 (First Appeal) and 1300811C-

23166/ARTY/MP6B/63/Appeal/2003/AG/PS-4(d) dated 24 Jul 2003 (2nd LI Appeal) (nnexure A-1 Coolly): and

(c) To direct the respondents to grant the disability pension 20% and further rounding off the disability pension to 50% in terms of letter dilted 31 Jan

2001; and

(d) To grant an interest of 1.8% on the delayed payment of service dement of the dtsablity pension and revision; and

(e) To award exemplary costs upon the Respondents in the (acts arid circum5tances of the record; and

(f) Such further order or orders, direction f EfirctIons be passed so as to this Learned Tribunal rr1ay deem fit and proper in accordance with law.

2. The facts of the case, in brief, are that the appknt was commissioned in the Indian Army on 21.12.1968 and retired nOrrli service on 31.12.2002

(AN) in iow medical category, after attaining thi! age of superannuation. The Release Medical Board (RMB) assessed his disability 'Coronary Artery

Disease (DVD-CABG-done) ICD.77.OrÂ© 20% for life. However, the MB opined that the disease of the applicant was neither aktiibutable to nor

aggravated by military servicc (NANA). 1-h!; claim for disability pension was reected vide letter dated 08.02.2003. Thereafter the appicant filed first

appeal which was rejected by the competent authority vide order dated 24.07.2003. Hence the instant O.A.

3. Learned Counsel for the applicant submitted that the applicant was medicay fit when he was commissioned in the Indian Army and any disability

not recorded at the time of commission should be presumed to have been caused subsequently. The action of the respondents in denying disability

pension to the applicant i 5 illegal. In this regard, he relied on the decision of the Honble Supreme Court InD haramvir 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 pre-commissioning medical tests. He pleaded that since the applicant was luny fit at the time of entry into

service, therefore, the disabiliity of the applicant which Is developed during militaof service be oonsOlered as aggravated by service gi 20%, broad

banded to 50%.

4. On the other hand, learned counsel for the respondents submitted that though the RiviS had assessed the disability of the applicant @ 20%,. it

opined that the disability to be INANA. 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 should be dismissed.

5. Having heard the learned counsel for both the parbes and ppnised the records, the only question that need 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 !tie disability has been opined as NANA by the RMB is that the disability of the applicant is

or institutional disease. However, on further scrutiny, we have observed that the applicant developed the disease called 'Coronary Artery Disease

(DVD-CABG-done) ICD.77.0' at a much later date in 2001 after completion of 33 years of service. We find that the crisp two word justification

given by RIV1B to deny attributabay i.e. 'Constitutionze Disease' is neither convincing nor rational, On careful perusal of the Medical Board we find

that the reason given for disability in question being NANA is very cryptic and lacks clarity. At page-5 of RMB itself in Para-2 it has been admitted

that the disability did not exist prior to enrolment of the applicant in service Likewise in Para-5(a) it has been admitted that the disability is not

attributable to the individual's own negligence or misconduct. Thus considering all issues we are inclined to give the benefit of doubt to the applicant.

Hence, the disability *Coronary Artery Disease (DVD-CABG-done) ICD.77.0' @ 20% for life is to be considered as aggravated by military service

in line with the law settled on this matter by the Honble Apex Court in the case of Ohativvir Singh (supra). Additionally, the applicant will also be

eligible for the benefit of rounding off to 50%, in terms of the decision of Honorable Supreme Court in Union of India and others v. Ram Avtar (Civil

Appeal No 418 of 2012 dated 10.12.2011).

7. Resultantly, the OA is allowed. The impugned orders are set aside. The applicant's disability 'Coronary Artery Disease (DVD-CABG-done)

ICD.77.0' is to be considered as aggravated by military service The applicant is entitled to disability element of disability pension @ 20(1/0 for life,

which shall be broad banded to 50% for life from the date of his discharge from service. However, due to lack of limitations settled by the Honble

Supreme court in the case of Shill Dass Union of India and others (2007 (3) SLR 445), the arrear of disability element will be restricted to three years

preceding the date of filing of the instant OA, The date of filing of this OA is 05.07.2017. 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 @ 8% per annum till actual payment,

8. No order as to costs.