

(2020) 06 AFT CK 0008

In the Armed Forces Tribunal

Case No : Original Application No. 1077 Of 2017

Ashok Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 25-06-2020

Acts Referred:

Citation : (2020) 06 AFT CK 0008

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

Bench : Division Bench

Advocate : J.P.Sharma, Rajeev Sharma

Final Decision : Dismissed

Judgement

1. The applicant through the medium of the instant Original Application is seeking the following reliefs:-

a) Quash and set aside the impugned letter dated 07.03.2017 as Annexure A1 impugned order.

b) Direct respondents to grant disability pension to the applicant by treating his disability viz. ""ACUTE MYOCARDIAL INFARCTION INF WALL

STEMI WITH RV EXTENSION"" as attributable to or aggravated by military service as it has caused due to stress and strain of military service as

law has already been settled by Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India and Ors. (Civil Appeal No. 4949 of 2013) 2013 AIR

SOW 4236, in Civil Appeal No. 2904/2011 titled as, Union of India and Ors. Vs. Rajvir Singh decided on 13 Feb 2015. And/or

c) Direct respondents to grant Disability Pension "" 30% and further benefit of rounding off Disability "" 30% to 50%"" wet. 01.05.2015 to for life in

terms of Gol, MoD dated 31.01.2001 and now the law has been settled by Hontle

Supreme Court in Civil Appeal No. 418/2012 titled U01 & Ors. Vs.

Ram Avtar vide order dated 10.12.2014 along with 10% interest p.a. And/or

d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case. 2. Brief facts of the case are that

the applicant was enrolled in Indian Army on 30.04.2015 in Low Medical Category on fulfilling the conditions of his enrolment. At the time of

retirement from service, the Release Medical Board (RMB) assessed his disability viz ""ACUTE MYOCARDIAL INFARCTION INF WALL

STEMI WITH RV EXTENSION @ 30% for life but opined the disabilities to be neither attributable to nor aggravated (NANA) by military service.

The first appeal against his claim of disability element was rejected by the respondents vide their letter dated 07.03.2017 Hence the present O.A.

2. Brief facts of the case are that the applicant was enrolled in Indian Army on 30 04 2015 in Low Medical Category on fulfilling the conditions of his

enrolment. At the time of retirement from service, the Release Medical Board (RMB) assessed his ""disability viz """"ACUTE MYOCARDIAL

INFARCTION INF WALL"" ""STEMI WITH RV EXTENSION"""" @ 30% for life but opined the"" disabilities to be neither attributable to nor

aggravated (NANA) by military service. The first appeal against his claim of disability element was rejected by the respondents vide their letter dated

07 03.2017. Hence the present O.A.3. Learned counsel for the applicant pleaded that at the time of enrolment, he was found to be fully fit and there is

no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The diseases of the applicant were

contracted during the service, hence it is attributable to and aggravated by Military service. He pleaded that various Benches of Armed Forces

Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof.

4. On the other hand, learned counsel for the respondents contended that disability of the applicant ""ACUTE MYOCARDIAL INFARCTION INF

WALL STEMI WITH RV EXTENSION"" @ 30`)/0 for life has been opined by RMB to be neither attributable to nor aggravated by military service,

hence his claim for grant of disability pension has rightly been rejected. He pleaded for dismissal of the OA.

5. We have heard learned counsel for the applicant as also learned counsel for

the respondents. We have also gone through the Release Medical Board proceedings. The only question which needs to be answered is straight and simple, i.e., whether the disabilities of applicant are attributable to or aggravated by military service?\

6. The law on attributability of disability pension has been settled by Hon'ble Supreme Court in the case of Dharamvir Singh Vs Union of India and Ors. (2013) 7 SCC 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 have noticed that the RMB has denied attributability on two grounds. The first ground is that the disease was not connected with service due to onset at Peace Station and the second ground was that the individual was a smoker which was an aggravating factor. Thus since the RMB has opined the smoking habit of applicant to be an aggravating factor, we have tried to understand the impact of smoking on health. We have noted that it is established beyond doubt in medical literature that smoking increases the chances of not only heart disease but also various other diseases, hence, cigarette packets have to carry a mandatory warning on its health hazard. Additionally, the medical literature is full of evidence that people who smoke are 2 to 4 times more likely to get heart diseases. The disability of the applicant is heart related. Thus, considering the totality of circumstances, we are of the opinion that we have no valid reason to give benefit of doubt to applicant and interfere with the opinion of medical board.

8. In this context we would like to quote the opinion of Hon'ble Supreme Court in Civil Appeal No. 1837/2009 titled Union of India & Another vs. Ex.

Rfn Ravinder Kumar, the Hon'ble Apex Court vide its order dated 23.05.2012 had stated that:-

Opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension brushing aside the opinion of the Medical Authorities, record the specific finding to the effect that the disability was neither attributable to nor aggravated by military service, the court should not ignore such a finding for the reason that Medical Board is specialized authority

composed of expert medical doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability

due to military service and the conditions of service resulting in disablement of the individual"".

9. Additionally, we would also like to quote the opinion of Hon'ble Supreme Court on the expertise of Medical Board in Civil Appeal No. 7672 of 2019

in Ex. Cfn Narsingh Yadav vs. Union of India & Ors. As under:-

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.

10. In view of the above, we are of the opinion that we have no valid reasons to interfere with the opinion of the RMB which has declared this disease

as NANA.

11. Accordingly, the Original Application No. 1077 of 2017 is liable to be dismissed and is dismissed.

12. No order as to costs.

Pronounced in open Court on 25th June 2020.