(2019) 10 AFT CK 0049

In the Armed Forces Tribunal

Case No : Original Application No. 131 Of 2018

Ashok Rajak APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 04-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0049

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

Bench : Division Bench

Advocate : V.S. Kadian, Praveen Kumar, V. Pattabhi Ram

Final Decision : Allowed

Judgement

1. The applicant, Ex. Sgt. Ashok Rajak, through the medium of the instant Original Application is seeking the following reliefs:

(a) Quash and set aside the impugned letters dated 10 Nov 2017.

(b) Direct Respondents to grant the disability pension @20% and rounding off the same to 50% for life to the applicant with effect from 12 Apr 2017

i.e. the date of discharge from service with interest @12% p.a. till final payment is made.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Air Force on 11.03.1997 and was discharged from service on

11.04.2017 in low medical category. The Release Medical Board (RMB) held at AF Station, New Delhi on 06.04.2017 assessed his disability

'DIABETES MELLITUS TYPE-II (OLD)' @20%. However, the RMB opined thdt the disease of the applicant was neither attributable to nor aggravated by military service (NANA). The applicant's claim for grant of disability pension was rejected by the respondents vide order dated

10.11.2017. Hence the instant Original Application.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in Air Force service and any disability not

recorded at the time of enrolment should be presumed to have been caused subsequently. The action of the respondents in denying disability pension

to the applicant is illegal. In this regard, he relied on the decisionS of the Hon'ble Supreme Court inD haramvir Singh v. Union of India and others,

(2013) 7 SCC 316 and Union of India & Another Versus Rajbir Singh (Civil Appeal No. 2904 of 2011, date of decision 13.02.2015) 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 and if no disability was detected at that time, then it is to be presumed that the disability arose while in service,

therefore, the disability of the applicant is to be considered as aggravated by service and he is entitled to get disability pension @20% and the same is

to be broad banded to 50%.

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

that the disability is NANA. As such his 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 should be dismissed.

5. Having heard the learned counsel for both the parties and perused the records, the only question that needs 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 the disability has been opined as NANA by the RMB is that the disease has originated in peace

station and there is no delay in diagnosis and no close time association with stress and strain. The disability was first detected in February 2013

whereas the applicant was enrolled in Air Force on 11.03.1997 i.e, after about more than 15 years of service. We are therefore of the considered

opinion that the reasons given in RMB for declaring disease as NANA is very brief and cryptic in nature and do not adequately explain the denial of

attributability. We don't agree with the logic that military stations in peace area don't encounter any stress and strain for military service. Hence, we

are of the view that in this case the benefit of doubt extends in favour of the applicant. Thus we are of the considered opinion that the disability

'DIABETES MELLITUS TYPE-II (OLD)' is to be considered as aggravated by military service in line with the law settled on this matter by the

Hon'ble Apex Court in the case of Dharamvir Singh (supra). Additionally, the applicant will also be eligible for the benefit of rounding off to 50% for

life, in terms of the decision of Horible Supreme Court in Union of India and others v. Ram Avtar (Civil Appeal No 418 of 2012 dated 10.12.2014).

7. Resultantly, the O.A. is allowed. The impugned orders are set aside. The applicant's disability `DIABETES MELLITUS TYPE-II (OLD)' @20%,

is to be considered as aggravated by military service and his disability element of pension is to be rounded off from 20% to 50% for life from the date

of discharge. The applicant is entitled to disability element of disability pension @ 20%, which shall be broad banded to 50% from the date of his

discharge from service i.e. 11.11.2017. 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 @ 8% per annum till actual date of payment.

8. No order as to costs.

