(2019) 09 AFT CK 0012

In the Armed Forces Tribunal

Case No : Original Application No. 874 Of 2016

Attar Singh — APPELLANT

Vs

Union Of India And Others — RESPONDENT

Date of Decision : 20-09-2019

Acts Referred:

Citation : (2019) 09 AFT CK 0012

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

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

,,,,

1. Vide separate order the OA has been dismissed. Learned counsel for the applicant made an oral request for grant of leave to appeal.,,,,

However, we do not find any question of law involving general public importance in the matter which warrants grant of leave to appeal.",,,,

As such oral prayer is declined.,,,,

Heard the counsels of both sides and perused the record.,,,,

2 The instant OA has been filed by the applicant, a Non Combatant (Enrolled) [NC (E)1, who was invalidated out of the Indian Air Force on",,,,

10.01.2005. after almost 23 years of service. on medical grounds, who feels aggrieved by the fact that he has not been granted disability element of",,,,

pension due to the reason that his medical disabilities viz. (i) Large Left Territory Infarct (ii) Right MCA Water Shed Infarct and (iii) Myocardial,,,,

infarction (old), at the time of his invalidation from service, were found to be neither attributable to nor aggravated by military service. The applicant",,,,

has prayed that his medical disabilities be treated as attributable/aggravated by service, and accordingly, he be granted disability element of pension @",,,,

100% after broad banding/ rounding off w.e.f. the date of his discharge from service.,,,,

3. Learned Counsel for the applicant submits that the applicant was enrolled in the IAF in the NC(E) category on 25.02.1982 and he was subsequently,,,,

invalided out of service on medical grounds w.e.f. 10.01.2005 after completion of 22 years. 10 months and 15 days of service. The applicant was,,,,

invalidated in low medical category FEE for the diagnoses (i) LARGE LEFT TERRITORYINFARCT (ii) RIGHT MCA WATER SHED INFARCT,,,,

and (iii) MYOCARDIAL INFARCTION. The Release Medical Board (RMB) was conducted and disabilities were assessed as (i) LARGE LEFT,,,,

TERRITORY INFARCT Â© 60%, (ii) RIGHT MCA WATER SHED INFARCT. Â© 40% for life and the composite disability was assessed Â©",,,,

70% for life. However, none of the disabilities were held attributable to nor aggravated by military service. Counsel avers that, at the time of entry into",,,,

service the applicant was subjected to thorough medical examination conducted by a board of doctors and only when found medically fit at the,,,,

Selection Centre in all respects was he enrolled in the Indian Air Force. The applicant was again put throuh medical examination at the Training,,,,

Centre before training and was found medically fit. The applicant contracted heart diseases during his service due to various duties involving stress,,,,

and strain. The applicant faced tremendous work pressure as the strength of the section was less as compared to the sanctioned strength. He had to,,,,

work day and night in adverse conditions. Counsel contends that the disease was aggravated on account of his service conditions due to frequent,,,,

transfers and moves to various places as per the requirements of service. He contends that the disease occurred due to stresses and strains of his job,",,,,

the social environment and emotional distress. The applicant was not granted disability pension even though he was invalided out from service as the,,,,

diseases recorded in the Invalid Medical Board Proceedings were assessed as neither attributable to nor aggravated by military service (NANA). The,,,,

applicant submitted first and second appeal to the competent authority to consider his case for grant of disability pension on humanitarian grounds but,,,,

the appeals were rejected. Aggrieved by the decision of the respondent. applicant filed a writ petition No.3554/2008 before the Hon'ble Delhi High,,,,

Court which was disposed off vide judgement dated 07.05.2008 and the respondents were directed to conduct an Appeal Medical Board, which was",,,,

conducted at Base Hospital, Delhi Cantt on 06.09.2008. The copy of Appeal Medical Board was not supplied to the applicant but he was intimated",,,,

that he is not entitled for any kind of disability pension.,,,,

4. Learned Counsel for the respondents. on the other hand, has controverted the arguments made on behalf of the applicant. Counsel has averred that",,,,

mere occurrence of any disease in service does not mean that it has happened due to service. There are certain other factors also which instigate the,,,,

occurrence of disease. Coronary Artery Disease/IHD is a spectrum of clinical disorders which includes asymptomatic 1HD, chronic stable angina,",,,,

unstable angina, acute myocardial infarction and sudden cardiac death (SOD) occurring as a result of the process of atherosclerosis. Prolonged stress",,,,

and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. However, there are no tasks or routines involving",,,,

enhanced stress and strain which the applicant was subjected to on account of his service conditions. In such cases the disease may be assumed to be,,,,

the result of biological factors, heredity and/or way of life such as indulging in risk factors like smoking. Atherosclerosis is also associated with several",,,,

environmental risk factors like family history of CAD. smoking. physical inactivity, obesity as well as associated diseases such as Hypertension and",,,,

Diabetes Mellitus (Refers Davidson Principles & Practice of Medicine 22""d Edition). Counsel avers that, in the instant case, the applicant was noted",,,,

to be a chronic smoker and consumed alcohol to moderate amounts. His Invalidating Medical Board held at 11 AF Hospital on 14.09.2004 found his,,,,

disabilities Large (LT) MCA Territory Infarct: MCA/ ACA Water shed Infarct and Acute Myocardial infarction as neither attributable to nor,,,,

aggravated byservice due to the reason that. as per Para 14 and 47 of Chapter VI. GMO 2008. The disabilities were constitutional in nature, and not",,,,

related/ precipitated by any service condition. Hence NANA. Nonetheless, the percentage ofdisablement was assessed as 60% for disability Large",,,,

(LT) MCA Territory infarction and 40% for disability MCA/ACA Water shed Infarct with composite assessment was assessed by Appeal Medical,,,,

Board as 70% for life but NANA,,,,

5. The applicant's medical profile, as noted by the Senior Adviser (Medicine and

Neurology) during the Appeal Medical Board conducted at Base",,,,

Hospital Delhi Cantt on 06.09.2008, pursuant to the order of the Delhi High Court, is as follows. -",,,,

SUMMARY AND OPINION OF COL CS NARAYANAN, SENIOR ADVISER (MEDICINE AND NEUROLOGY), BASE HOSPITAL DELHI",,,,

CANTT DATED 06 SEP 2008 Disabilities,,,,

1 Large left MCA Territory infarct,,,,

2. Right MCA/AAC watershed infarct,,,,

3. Acute Myocardial infarction,,,,

IMB: 14 Sep 2004,,,,

Profile; History of weakness of the right half of the body with acute onset on 20 Mar 2004, Associated with speech deficit. Gradual",,,,

recovery following ictus. He is ambulant without support. Past history of anterior wall myocardial infarction in 1993. No history of,,,,

hypertension or Diabetes Mellitus. Smoker; Consumes alcohol in moderation.,,,,

On Examination,,,,

Pulseâ?"70/min., regular; BP â?" 13/80 mm Hg; No carotid bruit; All peripheral pulsations felt; Other systems- Normal.",,,,

Nervous System,,,,

High mental functions normal; Speechâ?"Motor aphasia preset Right VII Nerve paresis (UMN). Spastically present in the right half of the,,,,

Disability,Attributable to service,"Aggravated by

service Y/N","Not connected with

service Y/N","Reason/cause/specific

condition and period in

service

1. Large MCA

Territory infarct",N,No,Yes,"The ID (i) (ii) & (iii)

are due to

atherosclerosis of

blood vessels which is

also known as '

Hardening of arteries"". Although any artery may be affected, the aorta, coronary and cerebral systems are the prime targets leading to cerebral and myocardial infarcts. Studies have shown that there are certain genetic and acquired factor which increases the risk of atherosclerosis These include ageâ?? sex, familial predisposition. Hyperlipidemia, hypertension and diabetes which are non modifiable and others being cigarette smoking and sedimentary life style which are self-induced and modifiable risk factors for the disease. In view of the above the ID (i) (ii) & (iii) are

conceded as not

attributable to military

service. There were

no other service

related aggravating

condition $ brought in

Para 14 & 47, chapter

VI. GMO mil Pens-

2002 & amendment-

2008 and the 14 days

charter of duties prior

to onset of ID (iii)_

has not shown any

evidence of excessive

stress and strain of

service. Hence all the

IDs are conceded as

neither attributable

nor aggravated by

military service

2.(R) MCA/ACA

watershed infarct",No,No,Yes,Same as above

3. Acute,No,No,Yes,Same as above

9 Counsel for the applicant has contended that the applicant was found fully fit medically by the medical authorities at the time that he was enrolled,,,,

into service and thus any disease contracted by him during his service life should be assessed as attributable to / aggravated by military service, in",,,,

keeping with a catena of judgments passed by various benches of the AFT as well as the Hon'bie Supreme Court. On the other hand. the respondents,,,,

have contended that the applicant's medical disabilities were contracted due to hereditary reasons as well as his life style choices/ habits like smoking,,,,

and thus cannot be conceded as attributable or aggravated by military service.,,,,

10. We also find that the applicant has neither provided evidence of service in high altitude, field areas, counter insurgency areas nor of having",,,,

suffered trauma as a consequence of injury or infections. Para 47 of Amendment to Chapter VI & VII, Guide to Medical Officers (Military Pensions)",,,,

2008 on ischaemic Heart Disease (IHD) states that neither attributability nor aggravation can be conceded in cases where neither immediate nor,,,,

prolonged exceptional stress and strain of service is evident. The disease may be assumed in such cases to be the result of biological factors. heredity,,,,

and way of life such as indulging in risk factors e.g. smoking. Thus, considering that the applicant has a history of cigarette smoking,",,,,

attributability/aggravation cannot be conceded and the O.A. is liable to be dismissed.,,,,

11. In the result, we find that the OA lacks merit and is disallowed.",,,,

12 No order as to costs,,,,

Pronounced in open court on the 20th day of September. 2019.,,,,

