(2019) 10 AFT CK 0047

In the Armed Forces Tribunal

Case No : Original Application No. 720 Of 2016

Bharat Bhushan APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0047

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

Bench : Division Bench

Advocate : Praveen Kumar, Shyam Narayan

Final Decision : Allowed

Judgement

1. The applicant, through the medium of the instant 0.A, has made the following prayers:

(a) Quash and set aside the impugned letters dated 20.05.2016;

(b) Direct the respondents to grant disability pension Â© 75% after rounding off for life to the applicant with effect from 01.11.2009 i.e. the date of

discharge from service with interest @ 12% per annum till final payment is made;

(c) AGIF to be directed to release the disability benefits from group insurance @ 75% with effect from 01.11.2009 with interest @ 12% per annum.

2. At the outset, learned counsel for the applicant submitted that the applicant is not pressing Relief (c) since the subject matter is pending before the

Hon'ble Supreme Court.

3. The applicant was enrolled in the Air Force on 18.01.1971 as an Airman, after going through a thorough medical examination, wherein he was

found medically fit. He was released from service on 31.10.2009 after completing his terms of engagement in the rank of Honorary Flying Officer in the permanent low medical category A4G4(P), after 37 years of service. The Release Medical Board assessed his disabilities (i) Diabetes Mellitus

Type-II ICD E-11, Z09.0 @ 15-19%; (ii) Primary Hypertension (old) @ 30%; and (iii) Diabetic Retinopathy (old) Â© 15-19% for lifeand further

opined that all the disabilities were neither attributable to nor aggravated by military service (NANA). It is in this perspective that the applicant has

preferred the present O.A.

4. Learned Counsel for the applicant contended that at the time of enrolment, the applicant was found mentally and physically fit for service in the Air

Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Air Force, therefore, he is

entitled to disability pension. In support of his contentions, he mainly relied on the decision in Dharamvir Singh v. Union of India and others (2013) 7

SCC 316.

5. On the other hand, learned counsel for the respondents contended that all the three disabilities of the applicant @ 40% (composite) had been opined

as NANA by the Release Medical Board (RMB), hence applicant is not entitled to disability pension. He, therefore, pleaded for the 0.A to be

dismissed.

6. We have heard learned counsel for both the parties and also gone through the documents available on record.

7. In this case, the two questions which needs to be considered by us are firstly as to whether the three disabilities of the applicant are attributable to

or aggravated by military service. Secondly whether the composite disability has been calculated correctly by the RMB?

8. We have noted that all the three disabilities of the applicant have been declared as NANA by RMB on grounds of being a constitutional disease.

We have however noted that the first two disabilities have started in the year 2006 i.e. after about 35 years of service. Hence denial with a cryptic

two word statement 'Constitutional disease' amounts to being unfair to the applicant because the stress and strain of military service has totally been

ignored. Hence in both these disabilities we would like to given benefit of doubt to the applicant and declare these two disabilities i.e. 'Diabetes

Mellitus Type-II' and 'Primary Hypertension' as Aggravated by military service. Additionally since 'Diabetes Mellitus Type-II' has been assessed @

15-19% i.e. 1% less than 20% which entitles the applicant to disability element hence in the interest of substantial justice, we deem it to be 20% for

life.

9. As far as this disability is concerned i.e. 'DIABETIC RETIONAPATHY' this disease is a direct result of diabetes and is caused due to damage to

finer blood vessels in the eye (Retina) due to high blood pressure. Hence this disease is not only related to Diabetes (Diabetes Mellitus Type-II) but a

direct result of it hence we are of the opinion that since 'Diabetes Mellitus Type-II' has been accepted by us as Aggravated by military service, this

third disease i.e. 'DIABETIC RETIONAPATHY' is also to be considered as Aggravated by military service.

10. In view of the above, we are of the considered opinion that all three disabilities of the applicant @ composite rate of 40% as assessed by RMB

are to be considered as Aggravated by military service in line with the Honible Supreme Court judgment on Dharamvir Singh v. Union of India and

others (2013) 7 SCC 316 and Union of India and another v. Rajbir Singh (2015) 12 SCC 264.

11. So far as the rounding off is concerned, in the light of the decision of the Hon'ble Supreme Court in Union of India and others v. Ram Avtar and

others (Civil appeal No 418 of 2012 decided on 10.12.2014), we are of the considered opinion that the applicant is entitled to the benefit of rounding

off from composite 40% to 50% for life with effect from the date of his discharge from service.

12. The applicant has also raised an issue relating to his composite assessment of disability and has prayed for the same to be changed from 40%

composite to 50% composite. He has given certain calculations and policy letters to support his claim. The respondents have filed an additional

affidavit to counter the claim of the applicant. They have quoted para 17 'A' Chapter VII of GMO-2002 to justify the composite assessment of RMB

as 40%.The most significant aspect of their submission is ""Where the functional effects of disabilities overlap the composite assessment will be

reduced in proportion to the degree of overlapping"". In view of the clarification given by respondents and in view of the fact that 'Diabetes Mellitus

Type-II' and 'Diabetic Retinopathy' are interrelated and overlapping diseases, we agree with the opinion of the RMB and hold that the composite opinion of 40% is valid. Additionally we would also like to mention that as per Hontle Supreme Court judgment of Dharamvir Singh (supra), the Guide

to Medical Officers is binding for conduct of a medical board by the respondents.

13. In view of the above, the O.A. is partly allowed. All three disabilities of the applicant @ composite rate of 40% are considered as aggravated by

military service. The applicant is eligible for disability element @ 40% rounded off to 50% for life with effect from the date of his discharge.

However, considering the fact that the 0.A has been admitted condoning the delay and laches, in view of the decision of the Hon'ble Supreme Court in

Shiv Dass vs. Union of India and others (2007 (3) SLR 445,) we are of the considered view that the arrears of the disability element are to be

restricted to a period of three years preceding the date of filing of the O.A. The date of filing of this 0.A is 14.07.2016. 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.

14. No order as to costs.

