

(2019) 10 AFT CK 0032
In the Armed Forces Tribunal
Case No : Original Application No. 680 Of 2017

Debasish Majumdar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0032

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

Bench : Division Bench

Advocate : Anil Srivastava, S.P. Sharma

Final Decision : Allowed

Judgement

1. The applicant by way of this OA seeks the following reliefs:

(a) Set aside the impugned order dated 19.02.2016 and 17.06.2014 being arbitrary and illegal.

(b) Direct the respondents to pay disability pension @ 50% w.e.f. the date of his retirement along with 12% interest on the arrears thereof.

(c) That the applicant be awarded cost of the litigation @ Rs.50,000/-.

(d) To pass any such other and further order or orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice and in the facts and

circumstances of the case.

2. The applicant was commissioned in the Indian Army on 7th June 1980, after going through a thorough medical examination, wherein he was found

medically fit. The applicant on attaining the age of superannuation retired from service on 31st August, 2014 after putting in thirty four years service in

low medical category. The Release Medical Board assessed his disabilities (i) "CATARACT (RT) EYE (OFTD) at the rate between fifteen to

nineteen per cent and (ii) ""PRIMARY HYPERTENSION"" at the rate of thirty per cent, both for life; neither attributable to nor aggravated and also

not connected with military service. The composite assessment for the disabilities was assessed at forty per cent for life. Aggrieved of the orders of

the respondents impugned herein, the applicant has filed the present OA.

3. The learned counsel for the applicant has contended that since the applicant was found mentally and physically fit at the time of commissioning in

the Indian Army and there is no mention in his service records that the applicant was suffering from any disease, he is entitled to disability pension. In

support of his contentions, learned counsel has placed reliance on the decision of the Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India

and Ors. [(2013 7 SCC 316)].

4. Per contra, the respondents have contended that the claim of the applicant, for grant of disability pension, was adjudicated by the competent

authority. However the same was rejected on the ground that since the applicant for most of the time was posted at peace stations, the disabilities, viz.

(i) ""CATARACT (RT) EYE (OPT!)"" and (ii) ""PRIMARY HYPERTENSION"" as recorded in Release Medical Board proceedings, are

neither attributable to nor aggravated by military service, therefore, the applicant is not entitled for disability pension.

5. We have heard learned counsel on both sides and have also perused the documents available on record.

6. The sole question which needs consideration is whether both the disabilities of the applicant are attributable to or aggravated by military service?

7. We have noted that the first disability of the applicant, i.e. ""CATARACT (RT) EYE (arm)"" has been declared as neither attributable to nor

aggravated by military service by the Release Medical Board on the ground that it is ""age related degenerative disorder"". In this case we agree with

the opinion of the Release Medical Board that Cataract is neither attributable to nor aggravated by military service. As far as the second disability, i.e.,

PRIMARY HYPERTENSION"" is concerned the Release Medical Board has declared the disease as neither attributable to nor aggravated by

military service on the ground that the onset of disease was in peace area and not Field/HAA/CI Ups tenure.

8. We are of the opinion that denying the applicant benefit of disability pension

for ""PRIMARY HYPERTENSION"" on this ground alone would not be fair and in the interest of justice. The applicant was commissioned in the Army in the year 1980 and as per the medical records the onset of the disease was in the year 2006, i.e., after twenty six years of service. Peace military stations also have their own pressures of military functioning and stress. Thus we are of the considered opinion that the disability ""PRIMARY HYPERTENSION"" at the rate of thirty per cent is to be considered as aggravated by military service.

9. So far as the rounding off is concerned, in the light of the decision of the Hon'ble Supreme Court in the case of Union of India and Ors. Vs. Ram

Avtir and Ors. (Civil Appeal No.418 of 2012 decided on 10th December, 2014), we are of the opinion that the applicant is entitled to the benefit of

rounding off from thirty per cent to fifty per cent for life with effect from the date of his discharge from service, i.e., 31st August, 2014. The

respondents are directed to comply with this order within four months from the date of receipt of a copy of this order. In default it will carry interest at

the rate of eight per cent till the actual payment is made.

10. In view of the above, the instant OA deserves to be allowed, hence allowed. No order as to costs.