(2019) 10 AFT CK 0042

In the Armed Forces Tribunal

Case No : Original Application No. 1178 Of 2017

D.V. Mohbe APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0042

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

Bench : Division Bench

Advocate : Ajai Bhalla, Avdhesh Kumar Singh

Final Decision : Allowed

Judgement

1. The applicant, Gp. Capt. D.V. Mohbe (17484-B) (Retd.), through the medium of the instant Original Application is seeking the following reliefs:

(a) The impugned letter dt. 10 Feb 2017 be set aside Respondents be directed to grant 50% of disability element of pension to the Applicant as per

Board bad policy w.e.f. 01 November 2015 with 9% interest per annum for disability of hypertension assessed Â©30% and composite disability

Â©40% including 20% for Type 2 Diabetes Mellitus.

(b) Grant any other/further relief.

2. The facts of the case, in brief, are that the applicant was commissioned in the Indian Air Force on 08.06.1984 and was retired from service on

31.10.2015 in low medical category. The Release Medical Board (RMB) held at HQ CAC, IAF on 07.04.2015 assessed his disabilities (i) 'PRIMARY

HYPERTENSION (OLD) I-10, Z-09.0' @30% and (ii) 'DM TYPE II (OLD) E-11, Z-09.0'Â© 20%, composite @40% for life. However, the RMB

opined that 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 10.02.2017. Hence the instant Original Application.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was commissioned in Air Force service and any disability

not recorded at the time of commissioning 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 decision of the Hon'ble Supreme Court in Dharamvir Singh v. Union of India and

others, (2013) 7 SCC 316 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 inservice, therefore, the disability of the applicant is to be considered as aggravated by service and he is entitled to get

disability pension @ 40% for life and the same is to be broad banded to 50%.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that though the RMB had assessed the

composite disabilities of the applicant @ 40%, it opined that the disabilities are 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 is to 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

disabilities of the applicant are attributable to or aggravated by military service?

6. We have noted that the only reasons for which both the disabilities have been opined as NANA by the RMB is that 'A life style related disorder

onset in Jul 2009 in peace station (Delhi). No close time association with stress/ strain/HM/CI Ops service. No delay in proper treatment'. The

disabilities were first detected in June 2009 and August 2011 respectively whereas the applicant was commissioned in Air Force on 08.06.1984 i.e,

after about more than 25 and 27years of service respectively. We are therefore of the considered opinion that the reasons given in RMB for declaring

diseases as NANA is very brief and cryptic in nature and do not adequately explain the denial of attributability. Hence, we would like to extend benefit of doubt in favour of applicant. Thus we are of the considered opinion that the disabilities (i) 'PRIMARY HYPERTENSION (OLD) I-10, Z-

09.0' (ii) 'DM TYPE II (OLD) E- 11, Z-09.0' are to be considered as aggravated by military service because stress and strain of military service is

also present in peace areas of military in line with the law settled on this matter by the Honible Apex Court in the case of Dharamvir Singh (supra).

Additionally, the applicant will also be eligible for the benefit of rounding off to 50%, in terms of the decision of Honible 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 disabilities (i) 'PRIMARY HYPERTENSION (OLD) I-10, Z-

09.0' Â©30% and (ii) 'DM TYPE II (OLD) E-11, Z-09.0' Â© 20%, composite Â©40% for life are to be considered as aggravated by military service

and his disability element of pension is to be rounded off from 40% to 50% for life from the date of his discharge from service i.e. 31.10.2015.

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 Â© 8% per annum.

8. No order as to costs.