(2019) 10 AFT CK 0027

In the Armed Forces Tribunal

Case No : Original Application No. 1550 Of 2017

H. Hussain APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0027

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

Bench : Division Bench

Advocate : Praveen Kumar, Harish V. Shankar

Final Decision : Allowed

Judgement

1. The instant 0.A has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 seeking the foliowing reliefs:

(i) Quash and set aside the impugned letter dated 06.06.2017;

(ii) Direct the respondents to grant disability pension @ 40% and rounding off the same to 50% for life to the applicant with effect from 01.07.2015

Le. the date of dlscharge from service with interest Â© 12% per annum till final payment is made.

2. The facts of the case, in brief, are that the applicant was commissioned in the Air Force on 20.05.1976 and superannuated from service on

30.06.2015 in the rank of Wing Commander, In low medical category. At the time of retirement from service, a Release Medical Board (RMB) was

conducted, which assessed the disabilities of the applicant(i) 'Primary Hypertension (Old) ICD No.11 and (ii) Diabetes Mellitus Type-II (Old) No. Eli'

@30% and 20% respectively (composite disability assessed Â© 40%). The RMB opined that both the disabilities are neither attributable to nor aggravated by military service (NANA). On 24.042017, the applicant sent a legal notice claiming disability pension, which was rejected by the

competent authority stating that the RM8 had recommended the disability IDs as NANA. Hence the instant O.A.

3. Learned counsel for the applicant submitted 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, The IDs of the applicant were

contacted during the service, hence It is attributable to and aggravated by military service. Therefore, the learned counsel pleaded that the applicant is

entitled to disability pension with the benefit of broad banding.

4. On the other hancir learned counsel for the respondents contended that disability of the applicant @ 40% has been regarded as NANA by the

RMB, hence applicant is not entitled to disability pension. He pleaded for dismissal of the O.A.

5. Having heard the learned counsel for the parties and gone through the RMB proceedings as well as the records, the onlyquestion which needs to be

answered is, whether the disabilities of the applicant are attributable to or aggravated by military service?

6. The law on attributability of a disability has already been settled by the Honible Supreme Court in the case of Dharamvir Singh Union of India and

othets (2013) 7 SCC 316). In Dharainvir Singh (supra), the Honible Supreme Court had taken note of the relevant provisions of the Pensions

Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and held that a member is presumed in sound physical and

mental condition upon entering service if there is no note or record at the time of entrance and in the event of his subsequently being discharged from

service on medical grounds any deterioration in his health is to be presumed due to service. It further held that if medical opinion holds that the disease

could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during

service, the Medical Board is required to state the reasons and it is mandatory for the Medical Board to follow the guidelines laid down in the relevant

Guide to Medical Officers.

7. In view of the settled legal position on attributability, we find that the RMB has

denied attributability to the applicant stating that the disabittties'(i)

Primary Hypertension and (II) Diabetes Mellitus Type-II are neither attributable to nor aggravated (NANA) only on the ground that the onset of both

the disabilities are. in peace stations and that there is no close asociation with stress and strain of field/HANCIOPS service. We are of the view that

this reasoning of the RMB is not convincing and does not reflect the complete truth on this matter. Peace Stations have their own pressures of

rigorous military training and assxlated stress and strain of military service. The applicant was enrolled in Air Force on 20.05,1978 and the disabilities

have started after more than 30 years of service Le, In March 2008. We are, therefore, of the considered opinion that the benefit of doubt, in these

circumstances, should be given to the applicant in view of Dharaino? Singh (supra) and both the disabilities of the applicant should be considered as

aggravated by military service.

8. The law on the point of rounding off of disability pension is no more res Integra, in view of decision in Union of Indio and Â°the/5 v. Rain Avtar

(C.A No 418 of 2012 decided on 10.12.2014). Thus in light of this Judgment the disability element of the applicant 40% (composite) shail stand

rounded off to 50% for life from the date of superannuation.

9. In light of above, the instant OA deserves to be allowed, hence allowed. The impugned order dated 06.06,2017 is set aside. The disabilities of the

applicant(i) 'Primary Hypertension (Old) 1CD No.11 and (ii) Diabetes Mellitus Type-II (Old) No. E11 are to be considered as aggravated by military

service. The respondents are directed to grant disability element to the applicant CO 40% for life which would stand rounded off to 50% for life with

effect from the date of superannuation i.e. 30,06.2015. The respondents are directed to give effect to this order within four months from the date of

receipt of a copy of this ander. Default will invite interest 1 9% per annum till actual payment.

10. No order as to costs.

