(2020) 03 AFT CK 0083

In the Armed Forces Tribunal

Case No : Original Application No. 993 Of 2017

Harcharan Singh Jaswal APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 13-03-2020

Acts Referred:
Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2020) 03 AFT CK 0083

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

Bench : Division Bench

Advocate : Praveen Kumar, Satya Ranjan Swain

Final Decision : Disposed Of

Judgement

1. Being aggrieved by denial of disability pension, the applicant has filed the present Original Application under Section 14 of the Armed Forces

Tribunal Act, 2007, wherein he has sought for the following reliefs:

(i) Quash and set aside the impugned letters dated 21 Apr 2017.

(II) Direct respondents to grant disability pension Â©50% after rounding off from 20% as recommended by RMB to the applicant with effect

from 01 May 2001, i.e. the date of discharge from service with interest Â©12% p.a. till final payment is made.

(iii) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

2. Briefly stated facts of the case are that the applicant was enrolled in Indian Air Force on 25.01.1963 and was discharged on 30.04.2001 in Low

Medical Category on attaining the age of superannuation. At the time of retirement from service, the Release Medical Board (RMB) held at 3 BRD, Air Force on 01.04.2000 assessed his disability â??Osteoarthritis both Knees (Old) (ICD 713, V-67)' @ 20% for two years but opined the disability to

be neither attributable to nor aggravated (NANA) by military service. The claim for grant of disability pension and the same was intimated to the

applicant vide Air Force Records Office, New Delhi letter dated 02.04.2003. The applicant preferred petition for grant of disability pension but the

disability pension has not been granted vide letter dated 21.04.2017. It is in this perspective that the applicant has preferred the present 0.A,

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian

Army and there is no note in the service documents to show that the applicant was suffering from any disease at the time of enrolment in Army. The

disease of the applicant was contacted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various

Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as

arrears thereof. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted

disability pension, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. `Osteoarthritis both Knees (Old) (ICD 713, V-67)'

@ 2 0 Wo for two years has been opined by RMB, to be neither attributable to nor aggravated by military service. Thus his claim for grant of

disability pension has rightfully been rejected by the respondents. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board

proceedings. The question which needs to be answered is whether the disability of applicant is attributable to or aggravated by military service?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of Dharamvir Singh Versus Union of

India & Others, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations,

Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same.

7. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the

disability 'Osteoarthritis both Knees (Old) (ICD 7131 V-67)' is constitutional in nature and therefore neither attributable to nor aggravated (NANA) by

military service and not connected with service. Perusal of medical records shows that the disability has originated for the first time in the March 1997

whereas the applicant was enrolled in the year 1963 i.e. after about 34 years of Air Force service. Considering all issues we are of the opinion that the

reasons given in RMB for declaring disease as NANA are brief and cryptic in nature and do not meet the ends of justice. It has to be kept in mind

that the applicant was an aircraft technician and his duties involved prolonged standing and bending for aircraft repairing and hence he deserves

benefit of doubt. Therefore, we are of the opinion that in view of the law settled on this matter by Dharamvir Singh vs Union of India & Ors (supra)

the disability of the applicant is to be considered as aggravated by military service, as such the applicant is prima facie entitled for the disability pension

for two years from the date of his discharge i.e. 01_05.2001.

8. Since the applicant's RMB was valid for only years w.e.f. 01.05.2001 to 30.04.2003, the respondents will now have to conduct a fresh RSMB for

him to decide his future eligibility to disability pension.

9. The RMB of the applicant was conducted after issuance of February 2001 policy letter on conduct of medical boards. The medical board in its

wisdom had restricted the validity of the medical board for two years only. Hence, as per Para 10 of the said letter, the disability of the applicant will

have to be reassessed for life by the next RSMB.

10. In view of the above, the Original Application deserves to be partly allowed, hence, partly allowed. The impugned order dated 21.04.2017 is set

aside. The disability of the applicant 'Osteoarthritis both Knees (Old) (ICD 713, V-67) is to be considered as aggravated by military service. The

applicant is entitled to grant disability element Â©20% for two years from the date of discharge of the applicant i.e. 01.05.2001. However, the

applicant has approached this Tribunal after huge delay, hence he is not entitled for the arrears for the above period, ie 01.05.2001 to 30.04.2003, in

view of the decision of the Hon'ble Supreme Court in Union of India Vs. Tarsem Singh, reported in 2009 (1) AISLJ 371. The respondents are directed to conduct an RSMB for the applicant. His entitlement to future disability element will depend on the outcome of the RSMB. The Respondents are

directed to give effect to the order within four months from the date of receipt of a certified copy of this order.

11. No order as to costs.

12. Pending application(s), if any, also stand disposed of.

Pronounced in the open court on 13th March., 2020.