
(2020) 06 AFT CK 0006

In the Armed Forces Tribunal

Case No : Original Application No. 2019 Of 2017

Hare Krushna Hota

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 23-06-2020

Acts Referred:

Citation : (2020) 06 AFT CK 0006

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

Bench : Division Bench

Advocate : Sudhir Kumar, S.D. Windlesh

Final Decision : Dismissed

Judgement

1. The applicant, Ex Sub Hare Krushna Hota, through the medium of the instant Original Application is seeking the following reliefs :

a. Quash and set aside the impugned letter no. PENG/PJC- 804252L/DP/X dated 18.05.2016 and PENG/PJC804252L/DP(APP.) 83 dated

17.08.2017 and direct respondents to grant disability pension to the applicant with effect from the date of his retirement.

b. Direct the respondents to grant rounding of benefit by broad banding his disability of benefit by broad banding his disability to 50% with effect from

the date of his retirement.

c. issue such further appropriate order/direction as this Hon'ble Tribunal may be deem fit and proper in facts and circumstances of the case.

2. Briefly stated facts of the case are that the applicant was enrolled in Indian Army on 20.12.1988 and was discharged from service on 30.04.2016.

That in the year 2009, while he was under treatment for blurring of vision in the right eye, the applicant was referred to Sankara Netralaya Chennai,

by MH Chennai on 05.05.2011. After thorough investigation, the applicant was suggested to undergo eye surgery of right eye for CATARACT and

GLAUCOMA WITH ANGLE CLOSURE and regarding treatment of left eye also. On 21.08.2013, the applicant had undergone right eye surgery.

Thereafter, his eye condition was reviewed at MH, Chennai and was sent to CH, AF (Bangalore) for classification and the Specialist opined the case

of the applicant as CATARACT and GLAUCOMA Right Eye (Optd.) with Angle Closure both eyes and the applicant was placed in E3 (T-24)

medical category. Thereafter, the applicant suffered blurred vision in left eye also and the same was diagnosed as GLAUCOMA. When he was sent

for review, Specialist categorised the condition of eye as E2 (Permanent). On 14.10.2015, before his retirement, the applicant was brought before the

Release Medical Board (RMB), which found him fit to be released in Medical Category E2 (P) and assessed his disability CATARACT (RT) EYE

(OPTD) WITH ANGLE CLOSURE GLAUCOMA BOTH EYES RIGHT EYE (OPTD) (REVISED DIAGNOSIS) @ 15-19% for life, but opined

the disability to be neither attributable to nor aggravated by military service (NANA) due to eye disorders not connected with military service.

Consequently, the case of the applicant for grant of disability pension was rejected by the respondents on the basis of the assessment of the disability

suffered by the applicant by the RMB as NANA as well as the percentage thereof has been less than 20%. The first appeal dated 10.11.2016 against

the impugned order was replied to by the respondents citing his non-eligibility of getting disability pension. Hence, the applicant has preferred the

present OA.

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

Army and there is no document that he was suffering from any disease at that time. The disease occurred because of the postings of the applicant at

field area i.e. Jammu and Kashmir.

4. On the other hand, although the facts of the case are not disputed by the learned counsel for the respondents, he contended that the disability of the

applicant i.e. CATARACT (RT) EYE (OPTD) WITH ANGLE CLOSURE GLAUCOMA BOTH EYES RIGHT EYE (OPTD) (REVISED

DIAGNOSIS) was opined as NANA, on the basis of Para 18(d) of Standard

Operating Procedure for adjudication for initial claims of disability

pension/special family pension, the applicant's case was rejected as he is not entitled to the disability pension. He further submitted that since the

disabilities were opined by RMB to be neither attributable to nor aggravated by military service, his claim for grant of disability pension has rightly

been rejected. He, therefore, sought dismissal of the present OA.

5. We have given our considerable thoughts to the respective submissions of the learned counsel for the parties and have carefully perused the

records of RMB.

6. It is undisputed case of the parties that at the time of his discharge, the applicant was brought before the RMB and that his disability was opined to

be NANA and assessed @ 15-19%. Needless to say that condition precedent for grant of disability element of pension is two-fold :

(i) Disability should be attributable to or aggravated by military service;

(ii) The assessment of disability should be 20% or more.

7. A perusal of the record shows that the applicant was fully fit when he was enrolled in the Indian Army. While serving with HQ A TN K&K Area

was placed in low medical category E3 (Temporary) for 'CATARACT (RT) EYE (OPTD) WITH ANGLE CLOSURE GLAUCOMA BOTH

EYES' for six months from 24.10.2013. On review, the applicant was upgraded to medical category E2 (Temporary) for the same for six months from

08.04.2014. On further review, he was finally placed in E2 (Permanent) medical category for 'CATARACT (RT) EYE (OPTD) WITH ANGLE

CLOSURE GLAUCOMA BOTH EYES RIGHT EYE (OPTD) (REVISED DIAGNOSIS)' for two years with effect from 08.04.2014. At the time

of discharge, he was brought before the RMB, which opined the disability of the applicant as NANA due to eye disorder (Cataract & Glaucoma) and

assessed the same @ 19% for life.

8. Counsel for the applicant argued that at the time of entry into service, the applicant was medically fit, hence, . any disease occurring after the entry

in the service, shall be deemed to have arisen during service and thus the disability suffered by the applicant is attributable to military service. It is

difficult to accept such a broad proposition of law. There are diseases which are age-related also, such diseases are directly related to ageing process

of an individual. The disease in question may have arisen after his entering into service as recorded in the medical board. Still, it has to be established

that the same is attributable to or aggravated by military service for granting him disability element of pension. In Chapter VI to of the Guide to

Medical Officers (Military Pension), it is provided that Cataract is primarily due to degenerative changes in the lens causing defective vision. There

are many causes for the same such as Metabolic diseases, trauma, drugs etc. as defined in the chapter. Perusal of the same makes it abundantly clear

that the disease 'Cataract' is unaffected by conditions of military service in both its onset and course unless the onset or course is brought about or

hastened by an ocular injury or infection during service. It is further clear that disease can be aggravated by long service under adverse conditions, as

for example in prolonged active operations or as a prisoner of war. Appendix H deals with Entitlement Rule for disability and there is Annexure III to

this Appendix, which deals with classification of diseases. Under head V' those diseases have been mentioned which are normally not affected by

service including Glaucoma. A conjoint reading of this classification makes it clear that the disability suffered by the applicant is not affected by

service conditions though this disease can be aggravated by long service under adverse conditions like prolonged active operations or as a prisoner of

war, which is not there in the present case. There is nothing on record that the applicant sustained any injury during service. The Medical Board has

clearly opined that the disease as NANA. Thus considering the totality of the case, we do not find any reason to differ with the opinion of the Release

Medical Board declaring the disease 'CATARACT (RT) EYE (OPTD) WITH ANGLE CLOSURE GLAUCOMA BOTH EYES RIGHT EYE

(OPTD) (REVISED DIAGNOSIS)' as NANA @ 15-19%.

9. In this context, we would like to quote the opinion of the Hon'ble Supreme Court vide order dated 23.05.2012 in Civil Appeal No. 1837 of 2009 titled

Union of India & Another Vs. Ex Rfn Ravinder Kumar, wherein the Hon'ble Apex Court stated that:

Opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension

brushing aside the opinion of the Medical Authorities, record the specific finding to the effect that the disability was neither attributable to

nor aggravated by military service, the court should not ignore such a finding for the reason that Medical Board is specialized authority

composed of expert medical doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability

due to military service and the conditions of service resulting in disablement of the individual.

10. Additionally, we would also like to quote the opinion of Honble Supreme Court on the expertise of Medical Board in Civil Appeal No. 7672 of 2019

in the matter of Ex Cfn Narsingh Yadav Vs. Union of India & Ors. as under:

21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such

report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of

the Review Medical Board.

11. As regards the condition (ii) regarding entitlement of disability pension when the assessment of disability by the RMB is less than 20% i.e. @ 15-

19% for life, we may refer to the judgment dated 11.12.2019 of the Honble Supreme Court in Civil Appeal No. 10870 of 2018- Union of India & Ors.

Vs. Wing Commander S.P. Rathore, wherein it was held that the officer who retires on attaining the age of superannuation/discharge is entitled to

disability pension only if the disability is assessed at 20% or above and furthermore the disability must be attributable to or aggravated by service.

12. In view of the preceding paragraphs and essential parameters given aforesaid, we find that there is no merit in the present OA and the same is

accordingly dismissed. There shall be no order as to costs.

Pronounced in open court on this 23th day of June, 2020.