(2019) 10 AFT CK 0017

In the Armed Forces Tribunal

Case No : Original Application No. 88 Of 2017

Hari Shankar Chaudhary APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0017

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

Bench : Division Bench

Advocate : V.S. Kadian, Jyotsna Kaushik

Final Decision : Allowed

Judgement

1. The applicant through the medium of the instant OA has made the following prayers:

(a) Quash and set aside the impugned letter No.NER/425586/LC-3 dated 15.11.2016, and/or

(b) Direct respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant him disability pension

including service element and disability element with the benefit of rounding oft. And/or

(c) Direct respondents to pay the due arrears of disability pension with interest @ 12% p.a from the date of retirement with all the. consequential

benefits.

(d) Any other relief which the Horeble Tribunal may deem fit and proper in the fact and circumstances of the. case along with cost of the application

in favour of the applicant against the respondents.

2. The factual details giving rise to the filing of the present OA are that the

applicant joined the Indian Army on 170' October, J977 .q ci was

discharged from service with effect from 31st October, 2001, Thereafter the applicant was re-enrolled in DSC with cffcct from 13th March, 2003 and

was discharged from DSC with effect from 30E'l September, 2016 due to low medical category. On discharge from DSC, the Release Medical Board

(RAU) assessed his disability ""Prima HypertensionHat the rate of thirty per cent for life but opined it to be neither attributable to nor aggravated by

military service. This lcd to the filing of the preseni OA.

3. The submission of learned counsel for the applicant is that since the applicant was found mentally and physically fit at the time of enrolment in DSC,

which fact is also admitted by the respondents, and did not suffer from any disease, he is entitled to disability pension. In support of his contention,

learned counsel has placed raancc on the decision of the flon'ble Supreme court in Dharamvir Singh Vs. Union of India and Oils._ [(2013 7 SCC

3161.

4. Per contra, learned counsel for the respondents contended that the claim of the applicant for grant of disability pension was adjudicator' by the

competent author*. However, after examining the details available in service record and also the factual position the same was rejected on the

grounds that the onset of the disability of the applicant, as recorded in Relea_se Medical Board proceeclings,is neither attributable to nor aggravated

by military service since the samestarted in March 2015 at peace station,

5. We have heard learned counsel on both sides and have also gone though the documents available on record. In this c_asc the only question which

we need to consider is as to whether the disability of the applicant is attributable to or assr:Ivated by military service?

6. The disability, Le., Primary Hypertension, at the rate of per cent for life, which started in March 201.5, has been denied attributability by RMB

solely on the ground that the origin of the disease is in a modified field area and not in field/1-1466A or Cl area. Modified field areas and Peace

stations have their own pressures of military functioning and therefore denial of a.ttributability only on the ground that it has not originated in

Field/FLAX/or Ci area, is not a just and a fair reason. In this situation wt. would like. to extend benefit of doubt in favour of 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 in line

with the judgment of HonIle Supreme Court in the case of Dharal17 Vir 6:in8h (supra).

7. Aditionally, in the light of the decision of the I.Ion'ble Supreme Court in the case of Union 0/M44i and Ors. Vs Ram 4431-and Ors. (Civil Appeal

No.418 of 2012 decided on 10th December, 2014), we are of the considered 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., 3 I6t October, 2001. Howevcr, as per the Iaw

settled by Hon'ble Apex Court in the case of Shiv Dass Vs, Union of India (2007) 9 SCC 27 4the arrears are restricted for a period of three years

preceding the date of filing of the OA. The OA was tiled on 11th January, 2017. 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.

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

