(2020) 03 AFT CK 0019

In the Armed Forces Tribunal

Case No : Original Application No. 1235 Of 2018, Miscellaneous Application No. 1173 Of 2018

Indra Raj Singh APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0019

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

Bench : Division Bench

Advocate : Praveen Kumar, Tarunvir Singh Khehar

Final Decision : Disposed Of

Judgement

M.A. No. 1173 of 2018

1. For the reasons carved out in the Application the delay of 3234 days in filing the Original Application is condoned.

MA No. stands disposed off.

O.A. No. 1235 of 2018

The applicant, Ex. MWO Indra Raj Singh, through the medium of the instant Original Application is seeking the following reliefs:

(a) Quash and set aside the impugned letters dated 01.07.2009 and 06.02.2018.

(b) Direct Respondents to grant the disability pension Â©30% composite and rounding off the same to 50% for life to the applicant with effect from

01 Sep 2009 i.e. the date of discharge from service with interest Â©12% p.a. till final payment is made.

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

2 Briefly stated facts of the case are that the applicant was enrolled in the Indian Air Force on 21.11.1970 and supernnuated on 31.08.2009 in Low

Medical Category. At the time of retirement from service, the Release Medical Board (RMB) held at Air Force Station, Bamrauli on 04.05.2009

assessed his disability 'PORTAL HYPERTENSION (EHPVO) (OLD) Z09.0)' @ 30% for life and opined the disability to be neither attributable to

nor aggravated (NANA) by service as the onset was in peace. The applicant approached the respondents for grant of disability element but the same

has been rejected vide their letter dated 06.02.2018. It is in this perspective that the applicant has preferred the present Original Application.

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 Air

Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Air Force. The disease of the

applicant was contracted 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 and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant Â©30% for life has been regarded as NANA by the

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

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 as well as the records. The only question which needs to be answered by us is straight and simple i.e. whether the disability of the

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 'PORTAL HYPERTENSION (EHPVO) (OLD) Z09.0)' is neither attributable to nor aggravated (NANA) by service as the onset of

disease is in peace This reasoning of RMB is not convincing and does not reflect the complete truth on this matter. The applicant was enrolled in

Indian Air Force on 21.11.1970 and the disability has started after more than thirty eight years of Air Force service i.e. in the month of December,

2008. We are therefore of the considered opinion that the reasons given in RMB for declaring disease as NANA is very brief and cryptic in nature

and does not adequately explain the denial of attributability. Additionally we are of the opinion that it is not correct to say that stress and strain of

military service is restricted to Field/HAA/CI Ops Area only. Stress and strain are intrinsic to military duties, hence, they are present at peace areas

also. Therefore, benefit of doubt in these circumstances should be extended in favour of the applicant in view of the law settled on this matter by

Dharamvir Singh vs Union of India & Ors (supra). In view of above, we consider the disability of the applicant as aggravated by military service, as

such the applicant is entitled for the disability element from the date of his discharge.

8. Additionally, in view of Hon'ble Supreme Court judgment in the case of Union of India and Ors Vs Ram Avtar & ors (Civil appeal No 418 of 2012

decided on 10th December 2014) we are of the opinion that the applicant is entitled to the benefit of rounding off from 30% to 50% for life from the

date of his discharge.

9. Thus the Original Application No.1235 of 2018 is allowed. The impugned orders dated 01.,07.2009 and 06.02.2018, enclosed as Annexure A-1

(CoIly) are set aside. The disability of the applicant i.e. 'PORTAL HYPERTENSION (EHPVO) (OLD) Z09.0)' is to be considered as aggravated by

military service. Additionally the disability of the applicant Â©30% for life stands rounded off to 50% for life. However considering the fact that the

O.A. has been admitted after condoning huge delay and laches, therefore, 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 grant disability element to the applicant from three years preceding the

date of filing this Original Application. The date of filing of the Original Application is 10.07.2018. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest Â©6% per annum till actual

payment.

10. No order as to costs.

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

Pronounced in the open court on 6th March, 2020.

