(2020) 03 AFT CK 0032

In the Armed Forces Tribunal

Case No : Original Application No. 1361 Of 2018, Miscellaneous Application No. 1349 Of 2018

Jajneswar Khuntia APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 05-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0032

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

Bench : Division Bench

Advocate : V.S. Kadian, Sonali Tiwari

Final Decision : Disposed Of

Judgement

M.A. No. 1349/2018

1. For the reasons carved out in the Application, the delay of 1095 days in filing the Original Application is hereby condoned.

M.A. stands disposed off.

O.A. No. 1361/2018

Aggrieved by the denial of disability element of pension, the applicant has filed the instant O.A seeking the following reliefs:

(a) Quash and set aside the impugned letter No C/3C728436/DP-1 dated 24.03.2018. And/or

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

pension, and benefit of broad banding from @ 30% to 50%. 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 Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Army on 26.02.1985 and was discharged from service on 28.02.2011

in low medical category on completion of his terms of engagement. The Release Medical Board (RMB) assessed his disability 'Primary Hypertension'

@ 30% for life. However, the RMB opined that the disease of the applicant was neither attributable to nor aggravated by military service (NANA)

due to onset in peace area. His claim for disability pension was rejected by the respondents. His first and second appeals were also rejected by the

respondents vide order dated 10.01.2012 and 23.04.2015 respectively. Thereafter, the applicant served a legal notice-cum-representation dated

14.12.2017 to the respondents which was also rejected vide order dated 24.03.2018. Hence the instant O.A.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in service and any disability not recorded at

the time of recruitment should be presumed to have been caused subsequently. The action of the respondents in denying disability pension to the

applicant is illegal. In this regard, he relied on the decision of the Hon'ble Supreme Court in Dharamvir Singh v. Union of India and others (2013) 7

SCC 316 and submitted that for the purpose of determining attributability of the disease to military service, what is material is whether the disability

was detected during the initial pre-commissioning medical tests and if no disability was detected at that time, then it is to be presumed that the disability

arose while in service, therefore, the disability of the applicant is to be considered as aggravated by service and he is entitled to get disability pension

@ 30%, rounded off to 50% for life. 4. On the other hand, learned counsel for the respondents submitted that though the RMB had assessed the

disability of the applicant @ 30% for life, it opined that the disability is NANA due to onset in peace area. As such his claim for disability pension has

rightly been rejected by the respondents. He submitted that the instant 0.A does not have any merit and the same is to be dismissed. 5. Having heard

the learned counsel for both the parties and perused the records, the only question that need to be answered is, whether the disability of the applicant

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is attributable to or aggravated by military service?

4. On the other hand, learned counsel for the respondents submitted that though the RNIB had assessed the disability of the applicant @ 30% for life,

it opined that the disability is NANA due to onset in peace area. As such his claim for disability pension has rightly been rejected by the respondents.

He submitted that the instant 0.A does not have any merit and the same is to be dismissed.

5.Having heard the learned counsel for both the parties and perused the records, the only question that need to be answered is, whether the disability

of the applicant is attributable to or aggravated by military service?

6. We have noted that the only reason for which the disability has been opined as NANA by the RMB is that the disease has originated in peace area

and has no association with Fd/HAA/CI area service. However, on further scrutiny, we have observed that the applicant developed ""Primary

Hypertension"" in August 1994 after completion of 9 1/2 years of service. We are not convinced that there is no stress & strain of military service in

military stations located in peace area, hence, we are inclined to give benefit of doubt to the applicant. Thus we are of the considered opinion that the

disability ""Primary Hypertension"" is to be considered as aggravated by military service in line with the law settled on this matter by the Hon'ble Apex

Court in the case of Dharamvir Singh (supra). Additionally, the applicant will also be eligible for the benefit of rounding off to 50%, in terms of the

decision of Hon'ble Supreme Court in Union of India and others v. Ram Avtar (Civil Appeal No 418 of 2012 dated 10.12.2014).

7. Resultantly, the 0.A is allowed. The impugned order is set aside. The applicant's disability ""Primary Hypertension"" is to be considered as aggravated

by military service. The applicant is entitled to disability element of disability pension @ 30% for life, which shall be broad banded to 50% for life. In

view of the decision of the Hon'ble Supreme Court in Union of India vs. Tarsem Singh reported in 2009 (1) AISL7 371, the arrears will be restricted

up to a period of three years preceding the date of filing of the O.A. The date of filing of this 0.A is 31.07.2018. Ordered accordingly. To be

implemented by the respondents within four months from the date of receipt of a copy of this order. Default will invite interest @ 6% per annum.

8. No order as to costs.

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9 Pending application(s), if any, also stand disposed off.

Pronounced in the open Court on 5th March, 2020.

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