
(2020) 03 AFT CK 0031

In the Armed Forces Tribunal

Case No : Original Application No. 1243 Of 2016

Kailash Chander

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0031

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

Bench : Division Bench

Advocate : Praveen Kumar, Shyam Narayan

Final Decision : Disposed Of

Judgement

1. The Ex MWO Kailash Chander (now deceased) substituted by his wife Smt. Neenu Bala Wasan, through the medium of the instant Original

Application is seeking the following reliefs:

(a) Quash and set aside the impugned letters dated 29 August 2016

(b) Direct Respondents to grant Disability Pension @20% and rounding it off to 50% for life to the applicant with effect from 01 Apr 2008 i.e. the

date of discharge from service with interest @12% p.a. till final payment is made.

(c) 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 Ex. MWO Kailash Chander (deceased) was enrolled in the Indian Air Force on 03.04.1970 and was

discharged on 31.03.2008 in Low Medical Category on fulfilling the conditions of his enrolment. At the time of retirement from service, the Release

Medical Board (RMB) held at 32 Wing AF on 19.07.2007 assessed his disabilities 'DIABETIC GANGRENE (RT) FOOT (OPTD) (OLD) Z09.0'

@20% for life and (ii) 'NIDDM (OLD) Z09.0' @15-19% for life, composite
Â©20% for life and opined the disabilities to be neither attributable to nor

aggravated (NANA) by service, reason - both the disabilities are constitutional in nature. The husband of the applicant (Ex MWO Kailash Chander)

approached the respondents for grant of disability pension and its rounding off but of no avail. It is in this perspective that the applicant has preferred

the present Original Application. Additionally Ex. MWO Kailash Chander has died on 03.09.2017 and has been substituted by his wife Smt. Neenu

Bala Wason vide order dated 24.10.2019.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, Ex. MWO Kailash Chander 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 diseases of Ex. MWO Kailash Chander were 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 husband of the applicant be

granted disability pension as well as arrears thereof, as such the husband of 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 both the disabilities of Ex. MWO Kailash Chander have been regarded as

NANA by the RMB, hence he 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 question which needs to be answered is straight and simple i.e. whether the disabilities of Ex. MWO Kailash

Chander are 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. find that the RMB has

denied attributability to Ex. MWO Kailash Chander only by endorsing that the first

disability 'DIABETIC GANGRENE (RT) FOOT (OPTD) (OLD)

Z09.0' is neither attributable to nor aggravated (NANA) by service as the disease is constitutional in nature. This reasoning of RMB is not convincing

and does not reflect the complete truth on this matter. Ex. MWO Kailash Chander was enrolled in Indian Air Force on 03.04.1970 and the disability

has started after more than 32 years of Air Force service i.e. on 10.06.2003. We are therefore of the considered opinion that the benefit of doubt in

these circumstances should be given to Ex. MWO Kailash Chander in view of Dharamvir Singh vs Union of India & Ors (supra) and the first

disability of the Ex. MWO Kailash Chander i.e. 'DIABETIC GANGRENE (RI) FOOT (OPTD) (OLD) Z09.0' should be considered as aggravated

by military service. However, we agree with the opinion of RMB that the second disability i.e. 1NIDDM (OLD) Z09.0' @15-19% for life is NANA.

8. 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 Ex. MWO Kailash Chander is entitled to the benefit of rounding off from 20% to 50% for life from

the date of his discharge till the date of his death i.e. 03.09.2017.

9. In view of the above, the Original Application No. 1243 of 2016 deserves to be partly allowed, hence partly allowed. The impugned order dated

29.08.2016, enclosed as Annexure No.A-1 of the Original Application, is set aside, The first disability of Ex. MWO Kailash Chander "'DIABETIC

GANGRENE (RT) FOOT (OPTD) (OLD)' is to be considered as aggravated by military service. However considering the fact that the Original

Application has been admitted after condoning the 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) AISli 371, the respondents are directed to grant disability element to Ex. MWO Kailash Chander @20%

which would stand rounded off to 500/cupto the date of his death (03.09,2017) w.e.f. three years preceding the date of filing this Original Application,

The date of filing of this O.A. is 28.09.2016. Since Ex. MWO Kailash Chander had died on 03.09.2017 and his wife Smt, Neenu Bala VVason has

been substituted in his place, hence, the arrears of payment be made to her. 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 @ 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.