

(2019) 10 AFT CK 0007

In the Armed Forces Tribunal

Case No : Original Application No. 1095 Of 2017

Kapll Kumar Gahlot

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0007

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

Bench : Division Bench

Advocate : J.P. Sharma, V.S. Mahandlyan

Final Decision : Allowed

Judgement

1. The applicant, Ex. Harv/Clk. Kapg Kumar Gaillot, through the medium of the instant Original Application s seeking the following reliefs:

(a) to quash and set aside the impugned order dated 12,01.2011 as Annexure A-1 impugned Order.

(b) Direct Respondents to grant Disability Element of Pension to the applicant by treating his disability, (i) ""MANIA WITH PSYCHOTIC

SYN1PTOMS F 30.2"" as attributable to or aggravated by military service as it has caused due to stress and strain of service only and now law has

already been settled by Hon'ble Supreme Court in Dharamvir Singh Vs 'XI & Ors (Civil Appeal No 4949 of 2013) 2013 AIR SCW 4236 and Civil

Apepal No 2904/2011 titled as UOI & Others Vs Rajbir Singh decided on 13.02.2015 And/or

(c) Direct Respondents to grant Disability Element of Pension ri.,40% and further rounding off of Disability @40% to 50% wef 12.05.2011 for life in

terms of GoIr MoD dated 31.01.2001 and raw settfed by Horible Supreme Court

in Civil Appeal No 418/2012 titled IJOI & Ors Vs Ram Avtar vide

judgment dated 10.12.2014 along with 10% interest p.a. And/or

(d) Any other relief which the Honble 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 presumed to have been caused subsequently. The action of the respondents in not granting

disability element to the applicant is illegal. In this regard, he relied on the decision of the Honible 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 precommissioning 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 'MANIA WITH PSYCHOTIC SYMPTOMS F-30.2' of the applicant is to

be considered as aggravated by service and he is entitled to get disability pension @40% for life and the same is to be broad banded to 50%.

4. On the other hand, learned counsel for the respondents submitted that though the IMB had assessed the disabilities of the applicant 40% each for

life, composite @60% for life, it opined that the disabilities are NANA. As such his claim for disability element has rightly been rejected by the

respondents. He submitted that the instant Original Application 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 needs to be answered is, whether the disability

No. (I) 'MANIA WITH PSYCHOTIC SYMPTOMS F-30.2' of the applicant is attributable to or aggravated by military service?

6. We have noted that the only reason for which the disabilities have been opined as NANA by the IMB is 'No Significant Service Related Cause or

Stress on Record', The disability 'MANIA WITH PSYCHOTIC SYMPTOMS F-30.2' was first detected on 15.09.2008 whereas. the applicant was

enrolled in Army on 01.08.2000 i.e. after about more than 08 years of service and the second disability 'ALCOHOL DEPENDENCE

SYNDROME' was detected after the onset of Psychotic disease on 05.03.2009. Be it mentioned that the applicant is not claiming any relief with

regard to his disability 'ALCOHOL DEPENDENCE SYNDROME'. We are therefore of

the considered opinion that the reasons given in I1V1B for declaring disease 'MANIA WITH PSYCHOTIC SYMPTOMS F-30.2' as NANA is very brief and cryptic in nature and do not adequately explain the denial of attributability. Hence, we would like to extend benefit of doubt in favour of applicant. Thus we are of the considered opinion that the disability 'MANIA WITH PSYCHOTIC SYMPTOMS F- 30.2' is to be considered as aggravated by military service in line with the law settled on this matter by the Honble Apex Court in the case of Oharamvir Singh (supra). Additionally, the applicant will also be eligible for the benefit of rounding off to 50%, in terms of the decision of Honble Supreme Court in Union of India and others v. Ram Avtar (Civil Appeal No 418 of 2012 dated 10.12.2014).

7. Resultantly, the O.A. is allowed. The impugned orders are set aside. The applicant's disability 'MANIA WITH PSYCHOTIC SYMPTOMS F-30.2'

at 40% for life, is to be considered as aggravated by military service and his disability element of pension is to be rounded off from 4000 to 50% for

life. Considering the fact that the O.A. has been admitted after condoning the delay and lapses, therefore, in view of the decision of the Honble

Supreme Court in Shiv Dass vs. Union of India and others (2007 (3) SLR 445), 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 O.A. is 04.07.2017. 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 @ 8% per annum.

8. No order as to costs.