(2019) 10 AFT CK 0066

In the Armed Forces Tribunal

Case No : Original Application No. 252 Of 2018

Kranthi Kumar Barla APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 04-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0066

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

Bench : Division Bench

Advocate : O.S. Punia, Arvind Patel

Final Decision : Allowed

Judgement

1. The applicant, EX-LRO (SPL) Kranthi Kumar Barla, through the medium of the instant Original Application is seeking the following reliefs:

A. Set aside the impugned order passed by the respondents of rejecting the claim of disability pension of the applicant on the ground that the disability

of the applicant was neither attributable to nor aggravated by Naval Service at 00% for life;

B. Set aside impugned order issued vide letter No PN/0134/D13/1048/17 DT. 01.9.2017 & 18.10.2017 for asking unwarranted and unwanted

documents/ undertaking from the applicant for considering his appeal/ representation against rejection of disability pension;

C. Direct the respondents to consider the disability of the applicant as attributable to and aggravated by service as well as consider the net assessment

qualifying for disability pension from Nil for life to @20% for life.

D. Direct the respondents to give the benefit of rounding off of disability element from @20% for life to @50% for life and grant disability pension w.e.f. 01.02.2012 @50% for life in the light of law laid down by Hontble Supreme Court alongwith interest @12% per annum alongwith all

consequential benefits; and

E. To award any other/further relief which this Honible Tribunal may deem fit and proper in the facts and circumstances of the case alongwith cost of

the application in favour of the applicant and against the respondents.

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Navy on 27.01.1997 and was discharged from service on 31.01.2012

in low medical category. The Release Medical Board (RMB) held at Military Hospital, Secunderabad on 05.11.2011 assessed his disability 'SEIZURE

DISORDER G 40.3' @ 20% for life. However, the RMB opined that the disease of the applicant was neither attributable to nor aggravated by

military service (NANA). The applicant's claim for grant of disability pension was not granted by the respondents vide orders dated 01.09.2017 and

18.10.2017. Hence the instant Original Application.

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

recorded at the time of enrolment should be presumed to have been caused subsequently. The action of the respondents in not granting 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 @ 20% for life and the same is to be broad banded to 50%.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that though the RMB had assessed the

disability of the applicant @ 20%, it opined that the disability is NANA. As such his claim for disability pension 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

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.

The disability was first detected on 04.10.2007 whereas the applicant was enrolled in Navy on 27.01_1997 i.e. after about more than 10 years of

service. 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 do not adequately explain the denial of attributability. We also believe that military stations at peace locations also have a very fair share of stress

and strain of military service. Hence, we would like to give benefit of doubt in favour of the applicant. Thus we are of the considered opinion that the

disability 'SEIZURE DISORDER G40.3' is to be considered as aggravated by military service in line with the law settled on this matter by the Honible

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 O.A. is allowed. The impugned orders are set aside. The applicant's disability 'SEIZURE DISORDER G 40.3' @20% for life, is to

be considered as aggravated by military service and his disability element of pension is to be rounded off from 20% to 50% for life. The applicant is

entitled to disability element of disability pension Â© 200/o for life, which shall be broad banded to 50% for life from the date of his discharge from

service, but considering the fact that the 0.A has been admitted after condoning the delay and laches, therefore, in view of the decision of the Hon'ble

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 OA is 29.01.2018. 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 @ 8% per annum.

8. No order as to costs.

