(2020) 03 AFT CK 0024

In the Armed Forces Tribunal

Case No : Original Application No. 1126 Of 2018

Madhubal B APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 05-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0024

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

Bench : Division Bench

Advocate : Rajendra Kumar, Y.P. Singh

Final Decision : Disposed Of

Judgement

1. The applicant, Col. Madhubal B. (Retd.), through the medium of the instant Original Application is seeking the following reliefs:

(a) Set aside the impugned order dated 28.02.2018 of rejection of second appeal of the Applicant and other orders passed against the first

appeal and initial claim.

(b) Direct the Respondents to grant him disability element Â©50% for life for the disability PRIMARY HYPERTENSION and DIABETES

MELLITUS TYPE-/I from the date of his retirement from service i.e. 01.05.2016.

(c) Direct the respondents to pay the arrears of disability pension from the date of his retirement with interest @9% pa till the date of actual

payment.

(d) Issue any other/direction as this Hon'ble Tribunal may deem fit in the facts of the case.

2. Briefly stated facts of the case are that the applicant was commissioned in the Indian Army on 11.06.1988 and retired on 30.04.2016 in Low

Medical Category on attaining the age of superannuation. At the time of retirement from service, the Release Medical Board (RMB) held at Kochi on

11.12.2015 assessed his disabilities (i) `PRIMARY HYPERTENSION (I10.0)' @ 30% for life and (ii) 'TYPE 2 DIABETES MELLITUS (E 11)'

Â©20% for life, composite Â©40% for life and opined the disabilities to be neither attributable to nor aggravated (NANA) by service, reason for both

â?" onset of ID in peace. The applicant's initial claim for grant of disability element and its rounding off was rejected by the respondents. The

applicant's first and second appeals were also rejected by the respondents vide their letters dated 07.07.2017 and 28.02.2018. 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 commission, the applicant was found mentally and physically fit for service in the

Army and there is no note in the service documents that he was suffering from any disease at the time of commission in Army. 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 as well as arrears thereof, as such

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 composite disability of the applicant Â©40% 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 disabilities of the

applicant 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.

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

disabilities i.e. (i) `PRIMARY HYPERTENSION (I 10.0)' and (ii) 'TYPE 2 DIABETES MELLITUS (E 11)' are neither attributable to nor

aggravated (NANA) by service as the onset of both diseases is in Peace area. This reasoning of RMB is not convincing and does not reflect the

complete truth on this matter. The applicant was commissioned in Indian Army on 11.06.1988 and the disabilities have started after more than 26 of

Army service i.e. in the month of October, 2014. 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 stress

and strain of military service is not limited to Field/HAA/CI Ops areas only. In fact stress and strain is intrinsic to military service and hence it is

equally applicable in peace areas also. Therefore, benefit of doubt in these circumstances should be extended in favour of the applicant. Thus in view

of the law settled by Dharamvir Singh vs Union of India & Ors (supra), we consider the disabilities 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 Honible 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 40% to 50% for life from the

date of his discharge.

9. In view of the above, the Original Application No. 1126 of 2018 deserves to be partly allowed, hence partly allowed. The impugned order dated

28.02.2018, enclosed as Annexure A-1 to the Original Application, is set aside. The disabilities of the applicant i.e. (i) 'PRIMARY HYPERTENSION

(I 10.0)' @ 30% for life and (ii) 'TYPE 2 DIABETES MELLITUS (E 11)' @20% for life, composite Â©40% for life, are to be considered as

aggravated by Army service. The applicant is in receipt of service element. The respondents are directed to grant disability element to the applicant

@40% for life which would stand rounded off to 50% for life from the date of his discharge i.e. 01.05.2016. 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 5th March 2020.