

(2019) 10 AFT CK 0051

In the Armed Forces Tribunal

Case No : Original Application No. 1723 Of 2017

Manoj Kumar Gupta

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 04-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0051

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

Bench : Division Bench

Advocate : Aditya Singh Puar, Avdhesh Kumar Singh

Final Decision : Allowed

Judgement

1. The applicant, Maj Manoj Kumar Gupta (Retd), through the medium of the instant O.A, is seeking the following reliefs:

(i) Petitioner, hence, prays for grant of disability pension in accordance with the applicable Rules and as held by the Honible Supreme Court vide

Annexures A-1 to A-6 and the Entitlement Rules, 1982, by setting aside that part of the Medical Board (Impugned Order (1) and the consequent

rejections (Impugned Order (2) wherein his disability has been opined to be neither attributable to, nor aggravated by military service being not only in

conflict with the Rules but also in direct contravention of a series of decisions of the Honible Supreme Court (as seen supra).

(ii) With a further prayer that the Respondent's may be directed to release disability pension for life, along with arrears to the petitioner, along with the

benefit of Broadbanding in accordance with the judgment of the Honble Supreme Court in Union of India v/s Ram Avatar with heavy costs and

compensation and interest within a time-bound manner;

(iii) Any other relief which the Hon /61e Tribunal may deem fit in the interest of petitioner.

2. The factual matrix of the case is that the applicant was commissioned in the Army on 20.09.2008 and was discharged from service on 06.02.2016

in low medical category S1H1A1P2(P)E1. At the time of commissioning in the Army, the applicant was medically examined and found fit in all

respects. At the time of discharge, the RMB assessed his disability ""Primary Hypertension"" @ 30% for life and opined it to be neither attributable to

nor aggravated by military service (NANA). His claim for disability pension was rejected vide letter dated 15.06.2016, against which the applicant

filed a first appeal which is still pending. Being aggrieved, the present O.A has been filed.

3. Learned counsel for the applicant pointed out that at the time when the applicant joined the Army service, he was medically examined and found to

be in Shape-I and the disability was contacted after completion of three years of service i.e. w.e.f. 10.08.2011 which resulted in the downgrading of

his medical category. The applicant continued in service till discharge from service. The rejection of the claim of the applicant for disability pension on

the ground that there is no close time association with stress and strain of military service with onset of disability, is illegal, therefore, conceding the

disability as neither attributable to nor aggravated by military service cannot be justified. Learned counsel also contended that the case of the applicant

is squarely covered by the decision of the Hon'ble Supreme Court in Dharamvir Singh v. Union of India and Others (2013) 7 SCC 316 and, therefore,

the applicant is entitled to disability pension.

4. Per contra, the learned counsel for the respondents submitted that the disability of the applicant had originated in peace area and had rightly been

opined as NANA by the RMB. Hence his claim for disability pension has rightly been rejected by the competent authority. He pleaded for the O.A to

be dismissed.

5. Having heard the learned counsel for the parties and perusal of the records, the questions that fall for our consideration is as to Whether the

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

6. On scrutiny, we have observed that the applicant who is an SSC officer; his disability was first detected on 10.08.2011 i.e. after about three years

of service and prior to that the applicant was not suffering from any ailment. We have noted that the RMB has denied attributability on the ground that the disease has no close time association with the stress and strain of military service. However since the applicant was fully fit at the time of his commission, and is very young when the disease first started, hence we are inclined to give the benefit of doubt in favour of 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 O.A is allowed. The impugned orders are set aside. The applicant's disability 'Primary Hypertension' is to be considered as aggravated by military service and he is entitled to disability pension from the date of discharge. The applicant's disability element @300/cfor life shall be broad banded to 50% for life from the date of his discharge from service. This order is to be implemented by the respondents within four months from the date of receipt of a certified copy of this order Default will invite interest 8% per annum.

8. No order as to costs.