(2019) 10 AFT CK 0046

In the Armed Forces Tribunal

Case No : Original Application No. 1754 Of 2017

Mehendra Pal Shakya APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 04-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0046

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

Bench : Division Bench

Advocate : V.S. Kadian, V.S. Tomar

Final Decision : Allowed

Judgement

1. The applicant, Ex. MWO Mehendra Pal Shakya, through the medium of the instant Original Application is seeking the following reliefs:

(a) Quash and set aside the impugned letter No Air HQ/99798/1/659767/12/16/ DAV(DP/RMB) dated 09.09.2016, And/or

(b) Direct respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant him disability element of

pension with the benefit of rounding off, and/or

(c) Direct respondents to pay the due arrears of disability pension with interest @12% p.a. from the date of retirement with all the consequential

benefits,

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with 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 Aft Force on 22.08.1977 and was discharged from service on

31.12.2016 after complete of terms of engagement in low medical category. The Release Medical Board (RMB) held at 56 ASP, AF Faridabad on

08.02.2016 assessed his disability 'DM TYPE II ICD NO. E11, Z09.0' @ 20%. 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 rejected by the

respondents vide order dated 09.09.2016. Hence the instant Original Application.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in Air Force 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 denying disability pension

to the applicant is illegal. In this regard, he relied on the decision of the Hontle 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% 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 originated in peace area and

was not detected during stay at Operational or Active areas. The disability was first detected on 12.01.2013 whereas the applicant was enrolled in Air

Force on 30.11.1994 i.e. after about more than 18 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 are of the opinion that military service in peace area also have their share of stress and strain of

military service. Hence we are of the view that the benefit of doubt in this case is in favour of the applicant. Thus we are of the considered opinion

that the disability 'DM TYPE II ICD NO. Ell, Z09.0' is 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 'DM TYPE II 1CD NO. Ell, Z09.0' @20%, 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 from date of

discharge. 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 till actual date of payment.

8. No order as to costs.

