

(2020) 01 AFT CK 0014
In the Armed Forces Tribunal
Case No : Original Application No. 1287 Of 2017

Mool Chand

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 23-01-2020

Acts Referred:

Citation : (2020) 01 AFT CK 0014

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

Bench : Division Bench

Advocate : Praveen Kumar, hyam Narayan

Final Decision : Allowed

Judgement

1. The applicant by way of this OA seeks the following reliefs:

a) Quash and set aside the impugned letters dated 19 Dec 2016.

b) Direct respondents to grant Disability Pension @ 20% and also Rounding off @ 20% to @ 50% for life to the applicant with effect from 01 Aug

2016 i.e. the date of discharged from service with interest @ 12% p.a. till final payment is made.

c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

2. The applicant was enrolled in the Indian Air Force on 28th July, 1981, after going through a thorough medical examination, wherein he was found

medically fit. The applicant was discharged from service on 31 a July, 2016 after putting in thirty five years service in low medical category. The

Releaase Medical Board assessed his disability ""Pituitary Macroadenoma (OPTD) and Hypopituitarism (Old)""at the rate of twenty per cent for life;

neither attributable to nor aggravated and also not connected with military

service. A legal notice dated 1st December, 2016 claiming disability pension and rounding off served on the respondents was duly replied vide letter dated letter dated 19th December, 2016, impugned herein. It is in these circumstances that the present OA has been filed.

3. The learned counsel for the applicant has contended that since the applicant was found mentally and physically fit at the time of enrolment and there is no mention in his service documents that the applicant was suffering from any disease, he is entitled to disability pension. In support of his contentions, learned counsel has placed reliance on the decision of the Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India and Ors. [(2013 7 SCC 316)].

4. On the other hand, the contention of the learned counsel for the respondents is that the claim of the applicant, for grant of disability pension, was adjudicated by the competent authority. However the same was rejected on the ground that the disability, viz. "Pituitary Macroadenoma (OPTD) and Hypopituitarism (Old)", as recorded in Release Medical Board proceedings is neither attributable to nor aggravated by military service (NANA), as there is no close time association with stress/strain of field/HAA/CIOPs. Hence, the applicant is not entitled for disability pension.

5. Having heard learned counsel on both sides and perusal of medical 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 this disease is related to Pituitary gland which is located inside the head of a human being. This disease is a kind of tumor. In this case post operation examination has confirmed this tumor to be non cancerous. This disease causes over production or under production of hormones by pituitary gland and hence the patient has also developed hypopituitarism. The exact cause of this disease is not known and as per reply affidavit the 'Guide to Medical Offices' is silent on this disease, though exposure to radiation or harmful chemicals acting as a trigger to this disease can't be ruled out. In this situation we have found that attributability to military service has been rejected only on the ground that the origin of disease is not in field/HAA or CION area. Denying the applicant attributability to military service only on grounds of origin of disease in peace area would be unjust and unfair in the eyes of law. The records reveal that the applicant for

larger period of his service tenure remained posted in Jammu and Kashmir and at high altitude areas. Thus we are of the considered opinion that the disability ""Pituitary Macroadenoma (OPTD) and Hypopituitarism (Old)"" at the rate of twenty per cent for life is to be considered as aggravated by military service as per the law settled on this issue by the Hon'ble Supreme Court in the case of Dharamvir. Singh (supra).

6A. So far as the rounding off is concerned, in the light of the decision of the Hon'ble Supreme Court in the case of Union of India and Ors. Vs Ram

Avtar and Ors. (Civil Appeal No.418 of 2012 decided on 10th December, 2014), we are of the considered opinion that the applicant is entitled to the benefit of rounding off from twenty per cent to fifty per cent for life with effect from the date of his discharge from service, i.e., 31st July, 2016.

7. In view of the above the applicant is entitled to disability element at the rate of twenty per cent rounded off to fifty per cent for life with effect from his date of discharge. The respondents are directed to comply with this order within four months from the date of receipt of a copy of this order. In default it will carry interest at the rate of eight per cent till the actual payment is made.

7A. In view of the above, the instant OA deserves to be allowed, hence allowed. No order as to costs.

Pronounced in open Court on this 23rd day of January, 2020.