

(2019) 10 AFT CK 0054

In the Armed Forces Tribunal

Case No : Original Application No. 1350 Of 2018

Mrinmoy Chatterjee

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 24-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0054

Hon'ble Judges : Sunita Gupta, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : V.S. Kadian, Rajesh Kumar Das

Final Decision : Allowed

Judgement

1. By virtue of this OA the applicant claims disability pension for the disability ""Primary Hypertension"" only and is not pressing his relief for the other

disability, i.e., ""Dyslipidemia (Old)

Arguments heard.

OA stands disposed of vide separate order of even date.

Heard learned counsel for the parties.

2. Challenge in this OA is to the order No. Air HQ/99798/1/774309/DAV/DP/CC dated 8th January 2018 vide which the claim made by the applicant

for disability pension through legal notice was rejected.

3. The facts germane to the filing of present OA are that the applicant was enrolled in the Air Force on 16th November, 1997 and discharged from

service on 2nd May, 2017. At the time of discharge, the applicant was brought before duly constituted Release Medical Board, which viewed his

disabilities, i.e., (i) ""PRIMARY HYPERTENSION (OLD) 10 Z09.0 and (ii)

""DYSLIPIDEMIA (OLD) E1 I Z09.0"" assessed the same at the rate of thirty per cent and one to five per cent respectively for life long.

4. However, the applicant was not granted Disability Element of Pension because the disability was not found attributable to nor aggravated by

service. The applicant served a legal notice claiming disability pension. However, the claim put forth by the applicant was rejected. Thereupon, the

applicant filed the present OA claiming Disability Element of Pension along with interest at the rate of twelve per cent per annum.

5. Learned counsel for the respondents, however, submitted that since the disability is neither attributable to nor aggravated by service, as such the applicant is not entitled for the relief.

6. The applicant while restricting his claim qua first disability only, i.e., ""PRIMARY HYPERTENSION (OLD) 10 Z09.0"" submitted that the relief

sought by him in the instant matter is squarely covered by a catena of decisions of the Hon'ble Supreme Court including Dharamvir Singh Vs. Union

of India (2013) 7 SCC 316, Union of India Vs. Chanderpal, Union of India vs. Rgivir Singh (2015) 12 SCC 26, 4Union of India vs. Angad Sing-h

Titaria (2015) 12 SCC 257, Union of India vs. Maryeet Singh (2015) 12 SCC 275, Ex Hay Maniram Maria vs. Union of India, Satwinder Singh vs.

Union of India, Ex Gnr Laxnunram Mon.& vs. Union of India (2017) 4 SCC 69 7According to the applicant, his claim for disability pension is also

supported by the applicable rules.

7. On the other hand, learned counsel for the respondents has contended that the claim put-forth by the applicant has been found to be 'Neither

Attributable to, Nor Aggravated by Military Service' by the Medical Board and, hence, he is not entitled to disability pension for the above disability,

since the opinion of the Medical Board, being an expert body, must be respected.

8. We have considered the submissions advanced by the learned counsel for both the parties in the light of the relevant rules and the judgment of the

Hon'ble Supreme Court rendered in Dharamvir Singh's case (supra), which has been followed in subsequent decisions of the Hon'ble Supreme Court.

In D.haramvir Singh's case, it has, inter alia, been held as under:

I. The question whether a disabili07 is attributable or aggravated by military service is to be determined under 'Entitlement Rules for Casually

Pensionary Awards, 1982".

II. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In

the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service.

III. If no note of any disability or disease was made at the time of individual's acceptance he deemed to have arisen in the service.

IV. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease

will not be deemed to have arisen during service, the medical board is required to state the reasons.

9. The matter for implementation of orders of Hon'ble Supreme Court/AFTs in respect of armed forces personnel in NANA cases was taken up with

the Department of Expenditure, Ministry of Finance for consideration. Department of Expenditure had agreed to implement those orders, in fact, Govt.

of India, MoD letter F.No. 4(I7)2015/D (Pen/Legal) dated 29.06.2017 was also sent to the Chief of Staff of Army, Navy and Air Force for

implementation of the judgment of Hon'ble Supreme Court in respect of Armed Forces Personnel in "NANA" (Neither Attributable to nor Aggravated

by military service) cases. However, no action was taken pursuant to this letter by the competent authority.

10. In fact, the Committee of Experts constituted by the Hon'ble Raksha Mantri while looking into the solutions for reducing litigations concerning the

Ministry of Defence and to put in place an efficient mechanism of redressal of grievances related to service and pension matters, inter alia,

recommended as follows :

Expert committee has recommended that whenever a legal principle is settled by a High Court or the Supreme Court, the same must be universally

applied to all similarly placed employees or at least on individual representations after examining the same, rather than fairing them into individual

litigation.

In this regard, attention is drawn to D(CMU)'s No. 7(9)/2018/D (04W dated 26.06.2018 (copy enclosed). However, it is proposed that each case may

be decided on its merit, subject to consultation with Department of Expenditure and DOI:1U having regard to financial implications.

11. It is undisputed case of the parties that when the applicant entered into the military service, he was not suffering from the above disability, which

leaves no manner of doubt that the disability accrued to him during the course of Military Service. Hence, following the principles laid down in

Dharamvir Singles case (supra), it is apparent that the disability is attributable or aggravated by Military Service.

12. In view of the aforesaid judicial pronouncements and the parameters referred above, the applicant is entitled for Disability Element of Pension.

Therefore, OA is allowed and the applicant is granted Disability Element of Pension for disability i.e. ""PRIMARY HYPERTENSION (OLD) 10

Z09.0"" at the rate of thirty per cent for life which is to be rounded off to fifty per cent from 1st February 2016 in view of the Govt. of India, Ministry

of Defence letter No. 1(2)/97/D(Pen-C) dated 31st January, 2001 and the judicial pronouncement of the Hon'ble Supreme Court in the case of Union

of India Vs. Am Antes' (Civil Appeal No. 418/2012) decided on 10th December, 2014.

13. The respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of this

order, failing which, applicant shall be entitled to interest at the rate of eight per cent annum till the date of payment.

14. No order as to costs.