
(2020) 03 AFT CK 0029
In the Armed Forces Tribunal
Case No : Original Application No. 46 Of 2018

Mukut Bihari

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0029

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

Bench : Division Bench

Advocate : Rohit Pratap, Avdhesh Kumar Singh

Final Decision : Disposed Of

Judgement

1. The applicant, Cdr. Mukut Bihari (Retd.), through the medium of the instant Original Application is seeking the following reliefs:

(a) To declare the action of respondents as unjust, arbitrary and illegal and

(b) To quash and set aside the letter No. PN/6927/DP/12 dated 03 Oct 2017 inspite of being found in low medical category S2A2

(Permanent) and to direct the respondents to allow the disability element of disability pension from the time applicant was superannuate

from service i.e. 31 Dec 2011, after 35 years of service.

(c) To direct the respondents to grant the benefit of rounding off disability of the applicant to 50% from 20% after rounding off in terms of

letter dated 31 Jan 2001.

(d) To grant an interest @18% on delayed payment of the disability pension and

(e) Any other relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstanceds of the case.

(f) Award Cost.

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Navy on 29.06.1976 and commissioned on 01.04.1986 and was

discharged on 31.12.2011 in Low Medical Category on fulfilling the conditions of his enrolment/commission. At the time of retirement from service,

the Release Medical Board (RMB) held at INNS Kasturi on 29.10.2011 assessed his disability SOMATISATION DISORDER ICD F 45.0' @ 20%

for life and opined the disability to be neither attributable to nor aggravated (NANA) by service and not related to service. The initial claim of the

applicant for grant of disability pension was rejected by the respondents. The applicant sent legal notice to the respondents which was rejected vide

their letter dated 03.10.2017. 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 enrolment and commission, the applicant was found mentally and physically fit for

service in the Navy and there is no note in the service documents that he was suffering from any disease at the time of enrolment and commission in

Navy. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Naval 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 disability of the applicant @20% 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 is whether the disability of the applicant is attributable to or

aggravated by Naval 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

disability SOMATISATION DISORDER ICD F 45.0' is neither attributable to nor aggravated (NANA) by service as the disease is not related to

service. This reasoning of RMB is not convincing and doesn't reflect the complete truth on this matter. The applicant was enrolled in Indian Navy on

29.06.1976 and the disability has started after more than 32 years of Naval service i.e. on 02.08.2008. We are therefore of the considered opinion that

the benefit of doubt in these circumstances should be given to the applicant in view of Dharamvir Singh vs Union of India & Ors (supra) and the

disability of the applicant should be considered as aggravated by naval service.

8. In view of Hon'ble 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) the applicant is entitled for rounding off of the disability pension from 20% to 50% .

9. In view of the above, the Original Application No. 46 of 2018 deserves to be allowed, hence allowed. The impugned order dated 03.10.2017,

enclosed as Annexure A-1 is set aside. No order as to costs.

11. Pending application(s), if any, also stand disposed of.

Pronounced in the open court on 6th March, 2020.