

(2019) 10 AFT CK 0009
In the Armed Forces Tribunal
Case No : Original Application No. 753 Of 2017

Murli Dhar Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0009

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

Bench : Division Bench

Advocate : Nidhi Raman, Anil Gautam

Final Decision : Allowed

Judgement

1. The applicant through the medium of the instant OA has made the following prayers:

(a) Quash the respondent's impugned letters dated 31.10.2016, 04.04.2016 and 04.08.2015 vide which they have respectively rejected the Applicant's

2nd Appeal dated 29.07.2016, 1st Appeal dated 20.08.2015 and the initial claim pertaining to grant of disability pension to him and the Release Medical

Board dated 7.5.15.

(b) Direct the respondents to convene a review of the Release Medical Board held in respect of the applicant, and to record the disability element as

30% in terms of sustained medical records of the applicant.

(c) Direct the respondents to accord full consequential benefits, accruing on grant of disability element to the Applicant, including amendment to the

Pension Payment Order in respect of the applicant and the accruing arrears thereupon.

(d) Pass any other order that this Hon'ble Tribunal may deem fit in the facts and

circumstances of the case 2.

2. The brief facts of the present OA are that the applicant was commissioned in the Indian Army as 20 Lieutenant in the Corps of Signals on 12th

June, 1982, after passing necessary education and medical tests, wherein he was declared medically fit, '11-12-1982 applicant, after passing in thirty three

years of Service, superannuated from service with effect from 31st August, 2015. On discharge, the Release Medical Board assessed his disability

'Primary Hypertension' at the rate of thirty per cent for life, but neither attributable to nor aggravated by military service. Aggrieved of this order the

applicant has filed the present OA.

3. The submission of learned counsel for the applicant is that since the applicant was found mentally and physically fit at the time of enrolment, which

fact is also admitted by the respondents, and did not suffer from any disease, he is entitled to disability pension. Learned counsel further contended

that commencing from the year 2001, the applicant was diagnosed as a case of Hypertension which was recorded by his Commanding Officer as

aggravated by military service. However, to the great surprise of the applicant and without there being any change of reason, the Release Medical

Board assessed the disability as neither attributable to nor aggravated by military service. In support of his contention, 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. Per contra, learned counsel for the respondents contended that the claim of the applicant for grant of disability pension was adjudicated by the

competent authority. However, in line with the opinion of N.J.M.B. which had opined the disabilities as : 'ANA the same were rejected. He submitted

that the applicant is not entitled to disability pension and prayed for the OA to be dismissed,

5. We have heard learned counsel on both sides and have also gone through the documents available on record.

6. The disability, "Primary Hypertension". at the rate of thirty per cent for life has been denied attributability solely on the ground that the origin of

the disease is in peace station and not in field/HAA or CI area. We do not agree with this logic. Peace stations do have their own pressures of military

functioning and therefore denial of attributability only on the ground that the

disease has originated in peace, is not justified. Thus we are of the considered opinion that in this case the benefit of doubt must go to the applicant, Hence the applicant's disability ""Primary Hypertension"" at the rate of thirty per cent is to be considered as aggravated by military service,

7. 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. *irsRam*

Aviv- and Ors. (Civil Appeal No.418 of 2012 decided on 1014 December, 2014), we are of the considered opinion that the applicant is entitled to the

benefit of rounding off from thirty percent to fifty percent for life with effect from the date of his discharge from service, i.e., 31%, August, 2015.

8. In view of the aforesaid the OA is allowed. The disability ""Primary Hypertension"" is to be considered as aggravated by military service. It is to be

rounded off from illiriy per rent lo fifty per cent for life. 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 per annum till the actual payment is made. No order as to

costs.