(2019) 10 AFT CK 0040

In the Armed Forces Tribunal

Case No : Original Application No. 1493 Of 2017

Nand Kishor Singh Yadav APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0040

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

Bench : Division Bench

Advocate : O.S. Punia, S.P. Sharma

Final Decision : Allowed

Judgement

1. Aggrieved by the impugned order dated 27.07.2007, denying him disability element of pension, the applicant has filed the instant 0.A seeking the

following reliefs:

A. Set aside the impugned order letter No. R0/2703/731378/03/ 08/P&W(DP/RMB) dt. 27.07.2007;

B. Direct the respondents to accept the disabilities of the applicant as attributable to and aggravated by service;

C. Direct the respondents to accept the composite disability of the applicant Â© 60% and grant disability pension to the applicant wef 01.04.2008;

D. Direct the respondents to give the benefits of rounding off of disability element from 60% for life to Â© 75% for life and grant disability pension

w.e.f. 01.04.2008 Â© 75% for life in the light of law laid down by Hon'ble Supreme Court alongwith interest @ 12% per annum alongwith all

consequential benefits; and

E. To award any other/further relief which this Honble Tribunal may deem fit and proper in the facts and circumstances of the case alongwith 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 Air Force on 30.03.1988 and discharged from service on 31.03.2008

(AN) in low medical category on completion of his term of engagement. The Release Medical Board(RMB) assessed his disabilities ID (i) `Mitral

Valve Prolapse' @ 3 0 % for life and ID (ii) 'Primary Hypertension' @ 30% for life and composite disability @ 30%. However, the RMB opined that

the disease of the applicant are neither attributable to nor aggravated by military service (NANA). His claim for disability pension was rejected vide

letter dated 27.07.2007. Thereafter the applicant filed first appeal which was rejected by thecompetent authority vide order dated 13.07.2017. Hence

the instant O.A .

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in Indian Air Force 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 unjust. In this regard, he relied on the decision of the Hon'ble 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. He pleaded that since the applicant was fully fit at the time of entry into

service, therefore, the disabilities of the applicant which are developed during military service be considered as aggravdted by service @ 60%, broad

banded to 75%.

4. On the other hand, learned counsel for the respondents submitted that though the RMB had assessed both the disabilities of the applicant @ 30%

each for life, it opined that the disabilities to be NANA. As such his claim for disability pension has rightly been rejected by the respondents. He

submitted that the instant 0.A does not have any merit and the same should be dismissed.

5. Having heard the learned counsel for both the parties and perused the records, the only question that need to be answered is, whether the disability

of the applicant is attributdble to or aggravated by military service?

6. We have noted that the only reason for which the disabilities have been opined as NANA by the RMB is that both the disabilities of the applicant

are 'constitutional in nature and not connected with service'. However, on further scrutiny, we ha\,e observed that the applicant developed the disease

ID (i) `Mitrai Valve Prolapse' in the year 1993 when he was admitted/ investigated in MH Madras and Command Hospital Air Force, Bangalore and

ID (ii) 'Primary Hypertension' in the year 2005 during reviev..' medical. On careful perusal of the Release Medical Board we find that the reason

given for the first disability i.e. `Mitral Valve Prolapse' is that it is a constitutional disease. Medical literature indicates that this disease relates to

improper closing of the valve in heart's upper left chamber (left Autrium). This disease sometimes leads to some part of blood leaking back into left

Autrium due to improper closure of valve. In this case we are inclined to agree with the RMB that this disease is constitutional in nature and is hence

NANA. In this context, we accept the point of view as given in Chapter II of Guide to Medical officers that constitutional disease may not be

detected at the time of enrolment. However we are of the opinion that second disability of the applicant i.e. 'Primary Hypertension' is affected by

stress and strain of military service. Thus considering all issues we are inclined to give the benefit of doubt to the applicant. Hence, we are of the

opinion that the disability 'Primary Hypertens,on' @ 30% for life is to be considered as aggravated by military service in line with the law settled on

this matter by the Hon'ble Apex Court in the case of Dharamvir Singh (supra). Additionally, the applicant will also be eligible for the benefit of

rounding off to 55u70, in terms of the decision of Hon'ble Supreme Court in Union of India and others v. Ram A vtar(Civil Appeal No 418 of 2012

dated i0.12.2014).

7. Resultantly, the 0.A is partly allowed. The impugned order is partly set aside. The applicant's disability 'Primary Hypertension' @ 30% for life is to

be considered as aggravated ,,)y military service. The applicant is entitled to disability element of disability pension @ 30% for life, which shall be

broad banded to 50% for life from the date of his discharge from service. However, due to law of limitations settled by the Hon'ble Supreme Court in

the case of Shiv Dass vs. Union of India and others (2007 (3) SLR 445) ,He arrear of disability element will be restricted to three years preceeliiig the date of filing of the instant O.A. The date of filing of this _..A is 24.08.2017. The respondents are directed to give effect to this r within four months

from the date of receipt of a copy of this Default will invite interest @ 8% per annum till actual payment.

8. No order as to costs.

