

(2019) 10 AFT CK 0030
In the Armed Forces Tribunal
Case No : Original Application No. 1582 Of 2017

Om Prakash

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0030

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

Bench : Division Bench

Advocate : J.P. Sharma, V.S. Tomar

Final Decision : Allowed

Judgement

1. Aggrieved by the impugned order dated 15.05.2017, denying him disability element of pension, the applicant has filed the instant O.A seeking the

following reliefs:

(a) to quash and set aside the impugned letter dated 15.05.2017 as Annexure A-I Impugned order.

(b) Direct Respondents to grant Disability Pension to the applicant by treating his disability ""Primary Hypertension"" with assessed Â© 300/0 for life as

attributable to or aggravated by military service as it has caused due to weather condition as accepted stress and strain of service as law already

settled by the Hon'ble Supreme Court various cases in Dharamvir Singh vs. UOI & Ors (2013) 7 SCC 316 I,atest of UOI & Ors Vs. Rajbir Singh

(Civil Appeal No. 2904 of 2011 decided on 13.02.2015. And/or

(c) Direct Respondents to grant Disability Pension Â© 30% to Â© 50% wef 01.08.2016 to for life in terms of GoI, MoD letter dated 31.01.2001 and

Civil Appeal No 418/2012 titled UOI & Ors Vs. Ram Avtar vide judgment dated

10.12.2014 alongwith 10% annual interest till the payment be made,
for which the applicant deserves.

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

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Army on 27.07.1988 and was discharged from service on 31.07.2016

(AN) in low medical category on completion of his terms of engagement. The Release Medical Board (RMB) assessed his disability 'Primary

Hypertension' @ 30% for life. However, the RMB opined that the disease of the applicant was neither attributable to nor aggravated by military

service (NANA) due to onset in peace area. His claim for disability pension was rejected vide letter dated 18.07.2016. Thereafter the applicant filed

first appeal which was rejected by the competent authority vide order dated 15.05.2017. Hence the instant O.A.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in service and any disability not recorded at

the time of recruitment should be presumed to have been caused subsequently. The action of the respondents in denying disability pension to the

applicant is illegal. 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 and if no disability was detected at that time, then it is to be presumed that the disability

arose while in service, therefore, the disability of the applicant is to be considered as aggravated by service and he is entitled to get disability pension

@ 30% and the same is to be broad banded to 50% for life.

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

it opined that the disability is NANA due to onset on peace area. As such his claim for disability pension has rightly been rejected by the respondents.

He submitted that the instant O.A does not have any merit and the same is to 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 attributable to or aggravated by military service?

6. We have noted that the only reason for which the disability has been opined as NANA by the RMB is that the disease has originated in peace area

and has no association with Fd/HAA/CI area service. However, on further scrutiny, we have observed that the applicant developed ""Primary

Hypertension"" in March 2014 after completion of 26 years of service. We are not convinced that there is no stress & strain of military service in

military stations located in peace area, hence, we are inclined to give benefit of doubt to the applicant. Thus we are of the considered opinion that the

disability ""Primary Hypertension"" 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 50%, in terms of the

decision of Honible Supreme Court in Union of India and others v. Ram Avtar (Civil Appeal No 418 of 2012 dated 10.12.2014).

7. Resultantly, the O.A is allowed. The impugned order is set aside. The applicant's disability ""Primary Hypertension"" is to be considered as aggravated

by 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. The respondents are directed to give effect to this order within four months from the date of receipt of a copy

of this order. Default will invite interest @ 8% per annum till actual payment.

8. No order as to costs.