
(2020) 03 AFT CK 0055

In the Armed Forces Tribunal

Case No : Original Application No. 1311 Of 2018, Miscellaneous Application No. 1290 Of 2018

Prabhakar Rai

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 11-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0055

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

Bench : Division Bench

Advocate : Praveen Kumar, Satya Ranjan Swain

Final Decision : Disposed Of

Judgement

M.A. No. 1290 of 2018

1. For the reasons carved out in the Application the delay of 663 days in filing the Original Application is condoned. MA stands disposed off.

O.A. No. 1311 of 2018

The applicant, Ex. JWO Prabhakar Rai, through the medium of the instant Original Application is seeking the following reliefs:

(a) Quash and set aside the impugned letters dated 08.09.2016 and 29.06.2018.

(b) Direct Respondents to grant disability Pension @50% after rounding off from 40% for life as recommended by RMB to the applicant with effect

from 01 Oct 2016 i.e. the date of discharge from service with interest @12% p.a. till final payment is made.

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

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the

applicant was found mentally and physically fit for service in the Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Air Force. The diseases of the applicant were contracted during the service, hence it is attributable to and aggravated by Military 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 disabilities of the applicant @20% for life and 30% life respectively, composite @40% 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 straight and simple i.e. whether the disabilities of the applicant are attributable to or aggravated by Military 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 MB has denied attributability to the applicant only by endorsing that the first and second disabilities i.e. 'DM TYPE II (OLD) ICD NO. E11, Z09.0' and 'CAD AWTI THROMBOLYSED (OLD) IC NO. 121.0, Z09.0' is

neither attributable to nor aggravated (NANA) by service as the onset is in Peace. This reasoning of RMB is not convincing and does not reflect the complete truth on this matter. The applicant was enrolled in Indian Air Force on 21.11.1978 and the onset of disabilities has started after more than 30 years of Air Force service. We are therefore of the considered opinion that the reasons given in RMB for declaring both diseases as NANA is very brief and cryptic in nature and does not adequately explain the denial of

attributability. Additionally we are of the opinion that stress and strain of military service is not limited to Field/HAA/ CO Ops Areas only. Stress and strain are intrinsic to military service, hence, they are present in peace Areas also. Therefore, benefit of doubt in these circumstances should be extended in favour of the applicant. Thus in view of the law settled by Dharamvir Singh vs Union of India & Ors (supra) we are of the opinion that both the disabilities of the applicant has been aggravated by military service, as such the applicant is entitled for the disability element of disability pension from the date of his discharge.

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) we are of the opinion that the applicant is entitled to the benefit of rounding off his composite disability @40% to 50% for life from the date of his discharge.

9. In view of the above, the Original Application No. 1311 of 2018 deserves to be allowed, hence allowed. The impugned orders dated 08.09.2016 and 29.06.2018, enclosed as Annexure A- 1 are set aside. Both the disabilities of the applicant are to be considered as aggravated by military service. The respondents are directed to grant disability element to the applicant @40% for life which would stand rounded off to 50% for life from date of his discharge i.e.30.09.2016. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 6% per annum till actual payment.

11. No order as to costs.

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

Pronounced in the open court on 11th March, 2020.