

(2019) 10 AFT CK 0002

In the Armed Forces Tribunal

Case No : Original Application No. 816 Of 2017

Preet Singh Mallhi

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0002

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

Bench : Division Bench

Advocate : Ajit Kakkar, Barkha Babbar

Final Decision : Allowed

Judgement

1. Aggrieved by the impugned order dated 03.06.2016, denying him disability element of pension, the applicant has filed the instant GA seeking the

following reliefs:

a. To further direct the Respondents to make his disability attributable/ Aggravated by Service and grant the disability pension to the applicant with interest.

b. To direct the respondents to round off disability at 75%.

c. Pass such and other orders, as this Honible Tribunal may deem fit and proper in the facts and circumstances of the case.

2. The facts of the case, in brief, are that the applicant was commissioned in the Indian Army on 20.12.1986 and was retired from service on

31.03.2016 (AN) in low medical category, after attaining the age of superannuation. The Release Medical Board (RMB) assessed his disabilities (i)

Fracture Both Bones Radius Ulna(Rt) (Optd) @20% for life, (ii) 'Primary Hypertension' @ 30% for life and (iii) 'Dyslipidemia' @ 6-10% for life. The

composite assessment of all three disabilities was 50% for life. However, the RMB opined that the diseases of the applicant were neither attributable

to nor aggravated by military service (NANA). His claim for disability pension was rejected vide letter dated 03.06.2016. Thereafter the applicant

filed first appeal on 12.12.2016 which was rejected by the competent authority vide order dated 31.05.2017 and no second appeal was preferred by

the applicant. Hence the instant O.A.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was commissioned in service and no disability was

recorded at the time of his commissioning. Therefore all disabilities of the applicant have been acquired during military service. In this regard, he relied

on the decision of the Honble Supreme Court in Dharamvir Singh vs. Union of India and others (2013) 7 SCC 316 and pleaded for the disabilities to be

considered attributable to or aggravated by military service. He prayed for disability pension @ 50/0, broad banded to 75% for life.

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

50% for life, it opined that the disabilities are NANA. As such applicant's 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 needs to be answered is, whether all the

disabilities of the applicant are attributable to or aggravated by military service?

6. We have noted that out of three injuries, the first injury is a case of motorcycle skid and the resultant fracture. For injury cases the attributability is

as per recommendation of Court of Inquiry. We have noted that the Court of Inquiry, as per statement of applicant and other witnesses, has concluded

the injury to be not attributable because it was acquired when the applicant went out to buy cigarettes for himself. As far as second disability Primary

Hypertension' is concerned the reason for denying attributability is that the onset of disease is in peace area and not in Fd/HAA/CI area. We don't

agree with this logic because stress and strain of military service is also present in peace areas of military stations. However, we agree with the

opinion of RMB on the third disability and consider third ID 'Dislipidemia' as

NANA. Hence, second ID i.e. 'Primary Hypertension' @ 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 50% from the date of discharge in terms of the decision

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

7. Resu Ctantly, 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 broad banded to 50% for life from the date of his discharge from service i.e. 31.03.2016 (AN). 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,