
(2019) 10 AFT CK 0036
In the Armed Forces Tribunal
Case No : Original Application No. 538 Of 2017

Raghu Bansh Singh	Vs	APPELLANT
Union Of India And Others		RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0036

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

Bench : Division Bench

Advocate : Praveen Kumar, V.S. Mahandiyar

Final Decision : Allowed

Judgement

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

(a) Quash and set aside the impugned letter dated 09 Feb 2017

(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 Aug 2011 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.

2. The applicant was enrolled in the Indian Air Force on 26th February 1974, after going through a thorough medical examination, wherein he was

found medically fit. He was discharged from service on attaining the age of superannuation with effect from 31st July 2011 after putting in thirty seven

years of service in low medical category. The Release Medical Board held on 3rd December, 2014 assessed his disabilities as "OPEN FRACTURE

MIDDLE PHALANX (RT) (OLD) at the rate of 15-19 per cent for life and ""PRIMARY HTN (OLD)""at the rate of thirty per cent for life. The

composite assessment for all disabilities was fixed at the rate of forty per cent but neither attributable to nor aggravated and also not connected with

military service. It is in these circumstances that the applicant has preferred the present OA.

3. The learned counsel for the applicant has contended that since the applicant was found mentally and physically fit at the time of enrolment and

there is no mention in his service documents that the applicant was suffering from any disease, he is entitled to disability pension. In support of his

contentions, learned counsel has placed reliance on the decision of the Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India

4. On the contrary, learned counsel for the respondents contended that the claim of the applicant for grant of disability pension was adjudicated by the

competent authority. However the same was rejected on the grounds that the disability, viz. ""OPEN FRACTURE MIDDLE PHALANX (RT)

(OLD) and ""PRIMARY HTN (OLD)""are neither attributable to nor aggravated by military service and since the applicant does not qualify for

disability pension as provided under Rule 153 of Pension Regulations for Indian Air Force, 1961 (Part-I), therefore, he is not entitled for the same.

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

6. On going through the medical records and counter affidavit it has been revealed that the disability of the applicant Primary Hypertension- started in

November 2005, after about thirty one years of service. Thereafter he suffered OPEN FRACTURE MIDDLE PHALANX (RD (OLD) in the year

2009 in a scooter accident. However, we find that his disability, i.e., Primary Hypertension at the rate of thirty per cent for life which originated in the

year 2005 has been denied attributability by RMB only on the sole ground that the origin of the disease is in peace station and not in a field/HAA or CI

are. We do not find such a denial to be fair. Peace stations also have their own pressures of military functioning and therefore denial of attributability

only on this ground is not acceptable. Hence we are inclined to give benefit of doubt to the applicant and consider his disability ""PRIMARY HTN

(OLD)"" as aggravated by military service in line with the judgment of the Hon'ble Supreme Court in the case of Dharamvir Singh (supra). As far as

disability OPEN FRACTURE MIDDLE PHALANX (RD (OLD) is concerned, the applicant has claimed in his OA that it occurred when he was

coming for office duty. However, we find that the respondents have attached injury report of the accident. In the injury report the applicant has given

his own statement and signed it. On scrutiny of injury report we agree with the contention of the respondents that the disability is not attributable to

military service.

7. Additionally, in the light of the decision of the Hon'ble Supreme Court in the case of Union of India and Ors. Vs Ram Avtar and Ors. (Civil Appeal

No.418 of 2012 decided on 10th December, 2014), we are of the considered opinion that the applicant is entitled to the benefit of rounding off from

thirty per cent to fifty per cent for life with effect from the date of his discharge from service, i.e., 31st July 2011. However, the arrears of disability

element will restrict to a period of three years preceding the date of filing of the OA as per the law settled by Hon'ble Apex Court in the case of Shiv

Dass Vs. Union of India and Ors. [(2007) 9 SCC 274.] The OA was filed on 29th March, 2017. 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 till the actual

payment is made.

8. In view of the above, the instant OA deserves to be allowed, hence allowed. No order as to costs.