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**(2020) 03 AFT CK 0063**

**In the Armed Forces Tribunal**

**Case No :** Original Application No. 1712 Of 2017

Rajiv Kumar Gosain

APPELLANT

Vs

Union Of India And Others

RESPONDENT

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**Date of Decision :** 17-03-2020

**Acts Referred:**

**Citation :** (2020) 03 AFT CK 0063

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

**Bench :** Division Bench

**Advocate :** J.R. Rana, Avdhesh Kumar Singh

**Final Decision :** Dismissed

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## **Judgement**

1. Aggrieved by the denial of disability pension vide order dated 06.03.2017, the applicant has filed the instant O.A seeking the following reliefs:

- (a) To declare the action of the respondents as unjust, arbitrary and illegal; and
- (b) To quash the respondents letter No 13415/1C-44786/A0C/MP-6(F)131/2017/AGPS-41imp-1) dated 06 Mar 2017 (Annexure A-1); and
- (c) To direct the respondents to grant the disability pension 30% and further rounding off the disability pension to 50% in terms of letter dated 01 May 2017; and
- (d) To grant an interest of 18% on the delayed payment of service element of the disability pension and revision; and
- (e) To award exemplary costs upon the Respondents in the facts and circumstances of the record; and
- (f) Such further order or orders, direction/directions be passed so as to this leaned tribunal may deem fit and proper in accordance with law.

2. The brief facts, as averred by the learned counsel for both the parties are that

the applicant was commissioned in the Indian Army on 13.06.1987

and retired from service on 30.04.2017 in low medical category after rendering more than 29 years of service. The Release Medical Board (RMB)

held at Alwar on 30.11.2016 assessed his disabilities (i) 'PRIMARY HYPERTENSION(I 10.0)' @ 30 % for life and (ii) 'OBESITY E-66' @ 5-10 To,

composite @ 30% for life. However, the RMB opined that both the diseases of the applicant were neither attributable to nor aggravated by military

service (NANA). The applicant's claim for grant of disability pension was rejected by the respondents vide order dated 06.03.2017. His first appeal

was also rejected by the competent authority vide order dated 27.11.2017, hence the instant Original Application.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled/commissioned in Army service and any

disability not recorded at the time of enrolment/commission 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 diseases to military service, what is

material is whether the disabilities were 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 disabilities arose while in service, therefore, the disabilities of the applicant is to be considered as aggravated by service and

he is entitled to get disability pension @ 300/0 for life and the same is to be broad banded to 50% for life.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that though the RMB had assessed the

disabilities of the applicant composite @ 30% for life, it opined that the disabilities are NANA and first disability occurred in peace area and second

disability is a life style disease, not related to military service. As such his claim for disability pension has rightly been rejected by the respondents. He

submitted that the instant Original Application 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 the

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

6. We have noted that the applicant suffered with two disabilities simultaneously i.e. first disability 'Primary Hypertension' and second disability

'Obesity', both the diseases originated in September 2015. We have also noted that when a soldier is put in 'OBESITY' category, it means that he is at

least 30 and above to his acceptable Body Mass Index (BMI). BMI is defined as a person's weight with respect to his height. Obesity also reflects

excessive fat accumulation in the body and is known to make a person more vulnerable to various diseases. This also clearly points out that the officer

has been in overweight category i.e. BMI between 25 & 29.9 for long before being declared obese. It also indicates that the officer has failed to

control his obesity from the previous few years till he retired in 2017.

7. In the above situation we feel that a soldier has special responsibility to keep himself fully fit. Being overweight to the extent of being placed in

lower medical category of 'OBESITY' amounts to being negligent towards own health and also amounts to an invitation to life style disease like

'Hypertension'. Thus in the above scenario when it is clear that the applicant was required to reduce weight by diet control and regular exercise due to

overweight and obesity, we are of the opinion that no benefit of doubt can be given in favour of the applicant. We are therefore, in agreement with the

opinion of the RMB that both the disabilities of the applicant are not connected with service and hence, are NANA. In a similar case on 08.07.2019,

Hontle Supreme Court has dismissed the Civil Appeal (Diary No. 21017/2019) Gyanendra Singh Versus Union of India & Others, arising out of

Judgment and order dated 20.02.2019 passed by this Tribunal in O.A. No. 1656 of 2016.

8. In view of the above, the applicant has failed to make out a case for himself. Hence, this Original Application is liable to be dismissed, hence,

dismissed.

9. No order as to costs.

10. Pending application(s), if any, also stand disposed off.

Pronounced in the open Court on 17th March, 2020.