

(2020) 03 AFT CK 0036

In the Armed Forces Tribunal

Case No : Original Application No. 377 Of 2018, Miscellaneous Application No. 234 Of 2018

Rajvir Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 05-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0036

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

Bench : Division Bench

Advocate : Archana Ramesh, Avadhesh Kumar Singh

Final Decision : Disposed Of

Judgement

M.A. No. 234/2018

1. For the reasons carved out in the Application, the delay of 97 days in filing the Original Application is hereby condoned.

M.A. stands disposed off.

O.A. No. 377/2018

Aggrieved by the denial of disability element of pension, the applicant has filed the instant O.A seeking the following reliefs:

A. Issue directions to the Respondents to quash and set aside the BEG Records, Roorkee letter dated 29 April 2017 placed as Annexure A-1 and to

declare the Invaliding Disease of 'Coronary Artery Disease' as either attributable or aggravated to military service to grant Disability pension in the

light of the landmark judgment of the Hon'ble Supreme Court in Re Dharamvir Singh vs. Union of India dated 02 July 2013 reported as (2013) 7 SCC

316 which is reflected in the Judgments of the Honible Armed Forces Tribunal in

Re Su SS Joseph Vs. Union of India in OA No 492/2014 dated 27

April 2015 as also in Re Sub G Arivazhagan Versus Union of India in OA No 251/2012 dated 27 April 2015 as also in Re CHM Dharamvir Singh vs

union of India in OA No 521/2014 dated 10 Aug 2015 placed as Annexure A-7 (Colly).

B. Pass such other and further orders/directions to the Respondents in the attendant genuine circumstances of the case, to meet the ends of justice.

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Army on 14.04.1991 and was discharged from service on 30.04.2017

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

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

military service (NANA) and onset of disease was in a peace area. His claim for disability pension was rejected by the respondents vide order dated

29.04.2017. The applicant submitted his first appeal on 01.01.2017 but the same has not yet been decided by the respondents. 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/1)1e 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

Â© 30% and the same is to be rounded off 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 Â© 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 'CORONARY

ARTERY DISEASE' in May 2006 after completion of 15 years of service. We are not convinced that stress and strain of military service is limited to

Field/HAA/CI Area and there is no stress & strain of military service in military stations located in peace areas. Hence, we are inclined to give

benefit of doubt to the applicant in this case. Thus we are of the considered opinion that the disability 'CORONARY ARTERY DISEASE' 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 from 30% to 50% for life, 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. Resultantly, the O.A is allowed. The impugned order is set aside. The applicant's disability 'CORONARY ARTERY DISEASE' 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 discharge i.e. 01.05.2017. Ordered accordingly. To be implemented by the respondents within four months from the date

of receipt of a copy of this order. Default will invite interest @ 6% per annum.

8. No order as to costs.

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

Pronounced in the open Court on 5th March, 2020.