(2020) 03 AFT CK 0082

In the Armed Forces Tribunal

Case No : Original Application No. 727 Of 2018, Miscellaneous Application No. 597 Of 2018

Ram Kishore APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 13-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0082

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

Bench : Division Bench

Advocate : Praveen Kumar, J.S. Yadav

Final Decision : Disposed Of

Judgement

MA 597 OF 2018

1. For the reasons carved out in the application, the delay of 2276 days in filing of Original Application is condoned. MA stands disposed of.

O.A. 727 OF 2018

The applicant, Ex (Hony Sub Lt) Ram Kishore, through the medium of the instant Original Application is seeking the following reliefs:

(a) Quash and set aside the impugned letters dated 23.05.2012 and 14.06.2013.

(b) Direct Respondents to grant disability Pension Â©40% and rounding off the same to 50% for life as recommended by RMB to the

applicant with effect from 01 Jan 2012 i.e. the date of discharge from service with interest Â©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 Navy

and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Navy. The disease of the applicant

was 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 along with the benefit of rounding off to

50%.

4. On the other hand, Ld. Counsel for the respondents contended that both the disabilities of the applicant have been opined as NANA by the RMB,

hence as per extant rules, theapplicant 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 detailed reply filed by

respondents and the Release Medical Board proceedings along with other records. The only question which needs to be answered by us 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 RMB has denied attributability to the applicant's first disability i.e.

`PRIMARY HYPERTENSION' as neither attributable to nor aggravated (NANA) by service because the onset of the diseases is in a Peace area

posting. This reasoning of RMB is not convincing and does not reflect the complete truth on this matter. The applicant was enrolled in Indian Navy on

24.06.1978 and the disabilities have started after more than 31 years of Naval service i.e. in the year 2010. We are therefore of the considered opinion

that the reasons given in Rly1B for declaring disease as NANA is very brief and cryptic in nature and does not do justice to the applicant. Additionally

we are of the opinion that stress and strain of military service is not limited to just Field/HAA/CI Ops Areas. Stress and strain is intrinsic to military

service hence it is 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 consider the disability of the applicant i.e. `PRIMIARY

HYPERTENSION' Â©30% for life as aggravated by Naval service, as such the applicant is entitled for the disability element from the date of his

discharge. Additionally as for as second disability of the applicant i.e. 'IMPAIRED FASTING GLUCOSE WITH IMPAIRED GLUCOSE

TOLERANCE' is concerned, we have noted that the RMB has opined it to be a `METABOLIC' disorder with no service related cause. After

considering all aspects of this disease we are in agreement with the opinion of the RMB that this disease is of a METABLOIC NATURE, hence,

NANA.

8. Additionally, in view of Hong)le 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 for Primary Hypertension from 30%

to 50% for life from the date of his discharge.

9. In view of the above, the Original Application No. 727 of 2018 deserves to be partly allowed, hence partly allowed. The impugned orders dated

23.05.2012 and 14.06.2013, enclosed as Annexure A-1 (CoIly.) to the Original Application, are set aside. The first disability of the applicant i.e.

'PRIMARY HYPERTENSION' @30 for life is to be considered as aggravated by Naval service. The applicant is in receipt of service element.

However considering the fact that the O.A. has been admitted after condoning the delay and laches, therefore, in view of the decision of the Hon'ble

Supreme Court in Union of India Vs. Tarsem Singh, reported in 2009 (1) AISLJ 371, the respondents are directed to grant disability element to the

applicant Â©30% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing this Original Application. The

date of filing of the Original Application is 05.04.2018. 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.

10. No order as to costs.

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

Pronounced in the open court on 13th March, 2020.