

(2019) 10 AFT CK 0016
In the Armed Forces Tribunal
Case No : Original Application No. 477 Of 2017

Ramakant Singh	Vs	APPELLANT
Union Of India And Others		RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0016

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

Bench : Division Bench

Advocate : V.S. Kadian, S.R. Swain

Final Decision : Allowed

Judgement

1. Through the medium of the instant O.A1 the applicant is seeking the following reliefs:

(i) Quash and set aside the impugned letter Na B/38046/N219/2015/AG/PS-4 (rd Appeal) dated 29.02.2016; and/or

(ii) Direct the respondents to treat the disability of the applicant as attributable to or aggravated by military service and to grant him disability element

of pension with benefits of rounding off/broad banding; and/or

(iii) Direct the respondents to pay the due arrears of disability element of pension with interest 12% per annum from the date of his discharge.

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Army on 02.01.1984 and was discharged from service on

3L01.2014, in the low medical category of S1H1A1P3E1(P).The Release Medical Board (Rmi3 assessednes disabilities (I) Primary Hypertension Â©

300/c for life and (ii) DysIipidaemia @ 6-10% for life. The RMB further opined that the diseases of the applicant were neither atisibuLable to nor

aggravated by military service (NANA), with Nil% of disability pension. The applicant preferred a first appeal, wherein he had stated that the applicant had suffered the disabilities due to stress and strain of the conditions of service. His first appeal was rejected. He thereafter preferred a second appeal. The second appeal was also rejected, on the ground that Primary Hypertension is an idiopathic disorder with a genetic pre-disposition and onset of the disease of the applicant was in peace and he remained in peace after onset of the disease. So far as the second ID is concerned, it was stated that the disease "Dyslipidaemic" occurred due to various inherited enzyme deficiencies and due to excessive intake of saturated fats and as such, the both the diseases were considered as NANA, Hence the instant O.A.

3. Learned Counsel for the applicant submitted that at the time of enrolment, the applicant was medically fit and there was no note, whatsoever, in his service records that he was suffering from any kind of disease at the time when he entered into the service. According to learned counsel for the applicant, 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 to the applicant is illegal. In this regard, he relied on the decision of the Hon'ble Supreme Court in Dharanwir 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 disabilities of the applicant are to be considered as aggravated by service.

4. Per contra, learned counsel for the respondents submitted that the RIM had assessed the disabilities of the applicant @ NIL% considering the same as NANA. As such his claim for disability pension has been rightly rejected by the respondents. He submitted that the instant O.A does not merit interference and hence 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 considered is, whether the disability of the applicant is attributable to or aggravated by military service?

6. In this case we have noted that the first disability i.e. 'Primary Hypertension

has started after about 29 years of service and the same has been denied attributability by RMB with a cryptic remark 'Not connected with service'. We feel that such a cryptic remark is not adequate to deny attributability when it is well established that the stress and strain of military service can adversely affect this disease. Thus we are inclined to give benefit of doubt in favour of the applicant. Therefore, we are of the considered opinion that the disease Primary Hypertension) 30% for life is to be deemed to be aggravated by military service in line with the law settled by the Hon'ble Supreme Court on attributability vide its judgment in the case of Dharanvir Singh (supra). Additionally we are of the opinion that the applicant is eligible for broad banding from 30% to 50% for life in terms of the Hon'ble Supreme court judgment in Union of India and others v. Ram Avtar Aboal No 418 of 2012.

7. However considering all issues, we agree with the opinion of the RMB that the second disability i.e. DYSLIPIDIMIA @ 6-10% is a metabolic disorder and is not connected with service hence NANA.

8. Resultantly, the OA 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 to disability element of disability pension @ 300/0, which shall be rounded off to 500/0 for life from the date of his discharge from service i.e. 31.01.2014. The respondents are required to implement this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 9% per annum.

9. No order as to costs.