(2019) 10 AFT CK 0035

In the Armed Forces Tribunal

Case No : Original Application No. 547 Of 2017

Ramesh Chand — APPELLANT

Vs

Union Of India And Others — RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0035

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

Bench : Division Bench

Advocate : Praveen Kumar, V.S. Tomar

Final Decision : Allowed

Judgement

1. The applicant by way of this OA seeks the following reliefs:

a) Quash and set aside the impugned letters dated 09 Feb 2017.

b) Direct respondents to grant Disability Pension @ 30% and also Rounding off @ 30% to @ 50% for life to the applicant with effect from 01 May

2012 i.e. the date of discharged 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 27th February 1974, after going through a thorough medical examination, wherein he was

found medically fit. On attaining the age of superannuation, the applicant was discharged from service on 30th April, 2012 after putting in thirtyeight

years service in permanent low medical category. The Releaase Medical Board assessed his disability ""Primary Hypertension""at the rate of thirty per

cent for life; neither attributable to nor aggravated and also not connected with military service. It is in these circumstances that the present OA has

been filed.

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 Dhararmwir Singh Vs. Union of India and Ors.

[(2013 7 SCC 316].

4. On the other hand, the contention of the learned counsel for the respondents is that the claim of the applicant, for grant of disability pension, was

adjudicated by the competent authority. However the same was rejected on the ground that the disability, viz. ""Primary Hypertension"", as recorded in

Release Medical Board proceedings, onset of which is somewhere in November 2005, while the applicant was posted in peace station and there being

no close time association with stress/strain of service, is neither attributable to nor aggravated by military service, therefore, the applicant is not entitled

for disability pension.

5. Having heard learned counsel on both sides, we are of the view that the instant matter is squarely covered by the decisions referred to herein above

and further attributability of the disease to military service cannot be denied merely on the ground that its originis in peace station and not in filed/HAA

or CI area. Such an argument cannot stand and has to be rejected straightaway. Denying the applicant disability pension on this ground alone would be

unjust and unfair in the eyes of law. Thus we are of the considered opinion that the disability ""Primary Hypertension"" at the rate of thirty per cent is to

be considered as aggravated by military service.

6. So far as the rounding off is concerned, in the light of the decision of the Hon'ble Supreme Court in the case of Union of India and Ors. Vs 1?arn

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., 30th April, 2012.

However, 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 1the arrears of disability element are restricted for a period of three years preceding the date of filing of the OA. The OA was filed on 30t1 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.

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