(2019) 10 AFT CK 0014

In the Armed Forces Tribunal

Case No : Original Application No. 739 Of 2016

Ramesh Chandra Misra APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0014

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

Bench : Division Bench

Advocate : V.S. Kadian, Prabodh Kuma

Final Decision : Allowed

Judgement

1. The applicant through the medium of the instant OA has prayed for thc following relifs:

a) Quash and set aside the impugned letter No. JC 569796/DP dated 07.04.2015, andior

b) Direct respondents to treat the disability FAKKINSONS attributable to Or aggravated by military service and grant disability pension to the

applicant, and/or

c) Direct respondents to grant rounding off/broad banding benefits by making it @ 50% in terms of Gov' of India, Min of Defence. letter

No,1(2)1971D(Pen-C) dated 31.01.2001 and law settled by Hon'ble Supreme Court in Civil Appeal No.418/20 12 titled U01 & Ors v. Rani Avtar vide

jucis,ement dated 1 0. 12.2014, and/or

d) Direct respondents to pay the due arrears of disability pension with interest(12% p.a from the date of his discharge.

e) 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 Forceon 9th November, 1973, alter going through a thorough medical examination, wherein he was

found medically fit. He, on attaining the age of superannuation, was discharged from service with effect from 31stOctober, 2012, after rendering about

thirty nine years of service. The Release Medical Board, at the time of discharge, found the applicant in low medical category assessing his

disabilities""(i) PRIMARY HYPERTENSION AND (1I) CAD (NSTEIN41-ACS)"" at the rate of thirty per cent each for life. The composite

assessment for both the disabilities was assessed at fifty per cent for life. However, the disabilities were held to be neither attributable to nor

aggravated and also not connected with military service. This led to the filing of the present OA.

3. The learned counsel for the applicant h.as contended that since the applicant was found mentally and physically fit at the Lime 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 ElorCble Supreme Court in TMA riunD haramvir Singh v. Union of India and

others, (2013) 7 SCC 316.

4. The contention of learned counsel for the re-spondents, on the contrary, is that the claim of the applicant for grant of disability pension was

acljudicated by the competent authority, Howevcr,as recorded in Release Medical Board proceedings, the same was roitcted on the grounds that since

the disabilities, viz. ""(0 PRIMARY EIYPERTENS ION AND (II) CAD (NSTEMI-ACS)"" ihave no close tune association with stress/strain of filed/1-

IAA/C1 Ops service. Additionally he stated that the applicant has a backgrotandof being in low medical category for Alcohol Dependence Syndrome.

He was a smoker and tobacco chewer also hence considering his past background the RMB has opined his disability to be NANA. lic pleaded for the

OA to be dismissed.

5. We have heard learned counsel on both sides and have also perused the documents available on record. In this case besides FMB, we have

perused k ite medical records since 1994 as attachedwith counter afficlaviL

6. The attached medical records of the applicant clearly indicate the following:

a) That the applicant in early 1995 was referred for psychiatric evaluatiom Certain relevant remarks of this reference by Commanding Officer are

The individual is an alcoholic an heavy smoke!: Often hc has probienis it:nutting interpersonal relationship and relations with his wife. He is unable to

manage his linances eiketively nor he is able to _have salisfactozy relattimship with his wile. He Men blames his wife for all his Miseries. However,

he has displayed no keenness on giving up his chinking habits nor has ht-' put any efibrt to manage his dolnestic alThirs

7, As per medical rc.ord it is sonic timc in 1995 that the applicant was discovered to have 'Angina pectoris', a condition of chest pain due to less supply

of blood to the heart. Medical records indicate that he was treated for both Alcohol Dependence Syndrome' and 'Angina pectoris' since 1995- This

'Angina pectoris' subsequently .%ot converted into ""Primary Hypertension"" in 1998. The individual with the help of treatment gradually reduced his

alcohol intake to a social. drinker and controlled his smoking, Thus in the above circumstances we agree with the opinion of the RiV113 that the

disease is not connected with service.

8. However, since the individual corrected himself gradually and controlled his smoking and drinking after 1998, we are of the opinion that his second

disability ""CAD (NSTEMI-ACS)""with onset in 2010 should not be denied merely on the ground that the onset was in peace station with no other

supporting evidence, hence we are of the opinion that his second disability ""CAD (NSTEMI-ACS)"" at the rate of thirty per cent is to be considered as

aggravated by military service.

9. So far as the rounding off is concerned, in the light of the decision of the Horeble Supreme Court in the case. of Union of India and OrS. VsRam

Avtar and Om (Civil Appeal NoA 18 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 fiftyper cent for life with effect from the date of his discharge from service, Le., 3 11tOctober, 2012.

10. The arrears are, however, restricted for a period of three years preceding the date of filing of the 0Aas laid down by Hon'ble Supreme Court in

the case of Shiv Dass Vs. Union of India and Ors, [(2007) 9 SCC 274].

11. In view of the above OA is partly allowed. The disability ""CAD (N5-11.1\41-ACS)"" at the rate of thirty per cent for life is to be considered as

aggravated by military service. His disability element at the rate of thirty per cent is to be rounded off to fifty per cent for life from the date of

discharge. However, clue to law of limitation his an-ears of disability element are restricted to three years preceding date of filing of the OA. The OA

was filed on 13th July, 2016. The respondents are directed to comply with this order within four months from the date of receipt of a copy of this order

failing which it will carry interest at the rate of eight per cent per annum till the actual payment is made. No order as to costs.

