

(2019) 10 AFT CK 0019

In the Armed Forces Tribunal

Case No : Original Application No. 268 Of 2017

Rarn Vir Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0019

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

Bench : Division Bench

Advocate : Praveen Kumar, V.S Mahandiyan

Final Decision : Allowed

Judgement

1. The applicant through the medium of the instant OA has sought the following reliefs:

- a) Quash and set aside the impugned letters dated 2.7 Sep 201 G.
- b) Direct respondents to grant disability Pension @ 50% and also rounding off the same. from 30% to (a) .50% for life to the applicant with effect from 01 ...in 2010, i.e., the date of discharge from service with interest q.2.), 12% till final payment is made,
- c) Any other relief which the Hon'ble Tribunal may deem fit and proper lit the fact arid circumstances of the case.

2. The applicant was enrolled in the Indian Air Force 20l December, 1933., after going through a thorough medical examination, wherein he was found medically fit. He was released from service on completion of his term of engagement with effect from 3 t December, 2009, after putting in twenty six yearsof service in low medical category A4G3 (1-). The Release Medical Board held on 1 NI Februaty, 2009 assessed his disability ""Autosomal

Dominant Polycystic Kidney Disease (Old) and "Secondary Hypertension (Old) at the rate thirty per cent for life; neither attributable to nor

aggravated and also not connected with military service. It is in these circumstances that the applicant has preferred the present OA.\

3. Learned counsel for the applicant contended that the instant matter is squarely covered by a catena of decisions of the Hon'ble Supreme Court

including *Dharamvir Singh Vs. Union of India and Ors.* (2013) 7 SCC 31, *Union of India and Or. Vs. Rajvir Singh* (2015) 12 SCC 26 and *Union of*

India and Or. Ansad Singh Titatia, (2015) 12 SCC 257. Further, the claim of the applicant is also supported by relevant cases.

4. On the other hand, learned counsel for the respondents contended that the claim of the applicant for grant of disability pension was adjudicated by

the competent authority. However the same was rejected on the grounds that the disability, viz. Autosomal Dominant Polycystic Kidney Disease (Old)

and Secondary Hypertension (Old), as recorded in Release Medical Board proceedings, being constitutional in origin, are neither attributable to nor

aggravated by military service, therefore, the applicant is not entitled to disability pension.

5. We have heard learned counsel on both sides and perused the records. We have noted that the applicant developed this disease for the first time in

October, 2004, i.e., after twenty years of service. This disease has also triggered secondary "Hypertension" in the applicant. The Release Medical

Board has opined the disease to be NANA on the ground of disease being constitutional in origin. We find that to some extent Release Medical Board

is correct because this disease as known in medical literature is primarily caused due to genetic reasons. However, considering the trade duties of the

applicant as 'Engine Driver' and the nature of duties and working hours his trade demanded, it will be in the interest of justice if the disease is conceded

as aggravated by military service. Hence the main disability, i.e., "Autosomal Dominant Polycystic Kidney Disease (Old)" is to be conceded as

aggravated by military service. Since this disease has been considered by us as aggravated, hence the second disability, i.e., "Secondary Hypertension

(Old)" which is related to first disability, i.e., kidney disease is also to be considered as aggravated. Thus both the disabilities of the applicant at the

composite rate of thirty per cent for life are to be considered as aggravated by military service in line with the Hon'ble Supreme Court judgment in

the case of Dhanunvir Singh (supm).

6. Additionally, in the light of the decision of the Honble Supreme Court in the case of Union of India and Ors. Vs Rani Avtar and Or. (Civil Appeal

No.418 of 2012 decided on 14 December, 2014), we are of the considered opinion that the applicant is entitled to the benefit of rounding off from

composite thirty per cent to fifty per cent for life with effect from the date of his discharge from service. However, as per the law settled by the

Apex Court in the case of Shiv Dass V. Union of India and Ors. [(2007) 9 SCC 274] the arrears are restricted for a period of three years preceding

the date of filing of the OA. The OA was filed on 31-4 January, 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.