

(2020) 03 AFT CK 0086

In the Armed Forces Tribunal

Case No : Original Application No. 950 Of 2016, Miscellaneous Application No. 2661 Of 2019

Rash Bihari Mishra

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 13-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0086

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

Bench : Division Bench

Advocate : Praveen Kumar, Arvind Patel

Final Decision : Disposed Of

Judgement

1. Aggrieved by the order dated 17.05.2016 denying grant of disability pension, the applicant has filed the instant O.A seeking the following reliefs:

(a) Quash and set aside the impugned letters dated 17 May 2016.

(b) Direct Respondents to grant Disability Pension @ 70% and also Rounding off @ 70% to @ 75% for life to the applicant with effect

from 01 Feb 2014 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 facts of the case, in brief, are that the applicant was enrolled in the Indian Air Force on 12.11.1976 and was discharged from service on

31.01.2014 in low medical category after rendering more than 37 years of service. The Release Medical Board (RMB) assessed his disabilities (1)

Depressive Episode @ 40% (ii) Primary Hypertension (Old) @ 30% (iii) NAFLD

15-19% (iv) IGT @ 15- 19% and (v) Dyslipidaemia (Old) @ 5%;

composite assessment for all the disabilities was @ 70% for life. However, the RMB opined that the disabilities of the applicant was neither

attributable to nor aggravated by military service (NANA) and onset of the disabilities was in peace station. The applicant's claim for grant of

disability pension - was not granted by the respondents vide order dated 17.06.2016. Hence the instant Original Application.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in the service and any disability not recorded

at the time of enrolment should be presumed to have been caused subsequently. The action of the respondents in not granting disability pension to the

applicant is illegal. In this regard, he relied on the decision of the Hon'ble Supreme Court in Dharamvir 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 the same is to be broad banded to 75%.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that though the RMB had assessed the

disabilities of the applicant @ 70% composite, it opined area, As such his claim for disability pension has rightly been rejected by the respondents. He

submitted that the instant Original Application does not have any merit and the same is to be dismissed.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board

proceedings as well as the records. The questions which needs to be answered is straight and simple i.e. Whether the disability of the applicant is

attributable to or aggravated by Military Service?6. After going through the opinion of the specialist medical officer, we have noted that the first

disability i.e. 'Depressive Episode' has been opined as NANA by the RMB in light of the fact is that there was ample evidence of domestic stresses.

Relevant extract of the opinion is given below :-

Detailed history revealed onset of symptoms in the background of domestic

stressors. His son who had got married in Aug 09 had strained marital relations. His wife left him and filed a dowry harassment case against him and his parents. He secured anticipatory bail, but remained worried about getting arrested. About a month prior to hospitalization he started having frequent palpitations, felt restless, depressed had disturbed sleep & lost interest in most activities. He felt helpless, was finally referred to psychiatrist. There was no past/family history of psychiatric illness. Denied any service stressors. Has an unblemished service. No history of substance abuse.

Hence we are of the opinion that benefit of doubt in this disease cannot be given to the applicant and we agree with RMB opinion that the disease is NANA.

7. As far as second disability i.e. 'Primary Hypertension' is concerned, we have noticed that the only reason for declaring the disease as NANA is

that it has originated in peace area and has no close time association with Fd/HAA/CI Ops tenure. However, on further scrutiny, we have observed

that this disability was initially detected in about 34 years of service. We are therefore of the considered opinion that the reasons given in RMB for

declaring diseases as NANA are very brief and cryptic in nature and do not adequately explain the denial of attributability. We don't agree with the

view that there is no stress and strain of service in military stations located in peace areas. Hence, we are inclined to give benefit of doubt in favour of

the applicant. Thus we are of the considered opinion that second disability ie. ""Primary Hypertension"" @ 30% is to be considered as aggravated by

military service because stress and strain of military service in line with the law settled on this matter by the Hon'ble Apex Court in the case of

Dharamvir Singh (supra). As far as other three disabilities of the applicant are concerned, they are all below 20% and considering all the related issues

in totality, we are in agreement with RMB opinion of declaring them NANA.

8. The applicant will also be eligible for the benefit of rounding off of second disability from 30% to 50% for life in terms of the decision of Hon'ble

Supreme Court in Union of India and others v. Ram Avtar(Civil Appeal No 418 of 2012 dated 10.12.2014).

9. Resultantly, the O.A. deserves to be partly allowed, hence partly allowed. The impugned order is set aside. The applicant's disability ""Primary

Hypertension"" @ 30% for life, is to be considered as aggravated by military service and his disability element of pension is to be rounded off from

30% to 50% for life from the date of his discharge i.e. 01.02.2014. Ordered accordingly. To be implemented by the respondents within four months

from the date of receipt of a copy of this order. Default will invite interest @ 6% per annum.

10. No order as to costs.

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

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