

(2019) 10 AFT CK 0052
In the Armed Forces Tribunal
Case No : Original Application No. 1727 Of 2017

RC Dwivedi

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 04-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0052

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

Bench : Division Bench

Advocate : I.S. Singh, Anil Gautam

Final Decision : Allowed

Judgement

1. Aggrieved by the impugned order dated 14.03.2017 denying him disability element of pension, the applicant has filed the instant O.A. seeking the

following reliefs:

(i) Set aside the impugned order dated 14.03.2017 passed by the respondents.

(ii) Direct the Respondents to treat the disability with which the Applicant is suffering as either Attributable to or Aggravated by military service.

(iii) Direct the respondents to grant disability pension to the applicant w.e.f. 01.05.2016;

(iv) Direct the Respondents to pay disability pension to the Applicant @ 50% w.e.f. 01.05.2016 by rounding off the applicant's disability from 20% to

50%;

(v) Direct the Respondents to pay 10% interest on the arrears of disability pension w.e.f. 01.05.2016 until the arrears are paid; and

(vi) Issue such other order(s)/direction (s) as may be deemed appropriate in the facts and circumstance of the case.

2. The facts of the case, in brief, are that the applicant was commissioned in the Indian Army on 24.12.1982 and superannuated on 30.04.2016, in low

medical category S1H1A1P2(P)E1, after having served for approx 34 years. The Release Medical Board (RMB) had assessed his disability 'Diabetes

Mellitus Type-2 (E-10)` @ 20% for life aggravated by military service, claim of which was denied vide order dated 14.03.2017 by the competent

authority on the ground of onset of the disease while posted in peace area. Appeal against rejection of disability pension was rejected vide order dated

14.03.2017. Hence the instant O.A.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was commissioned in Army and any disability not

recorded at the time of commissioning should be presumed to have been caused subsequently. He stated that over ruling of RMB opinion of 5

aggravation of disability by competent authority is illegal. In this regard, he relied on the decision of the Honible 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 at the time of commissioning in the Army and if no disability was detected at that time, then it is to be

presumed that the disability arose while in service, therefore, the disability of the applicant is to be considered as aggravated by service and the

applicant is entitled to get disability pension @ 20% and the same is to be broad banded to 50%.

4. On the other hand, learned counsel for the respondents conceded that RMB had opined the disease to be aggravated by military service but

submitted that since the disability of the applicant has been viewed to be NANA by the competent authority and the First Appellate Authority, the

applicant is not entitled to disability pension. As such his claim for disability pension has rightly been rejected by the respondents. He submitted that the

instant O.A. does not have any merit and the same should be dismissed.

5. We have heard learned counsel for the parties and perused the records.

6. We have perused the RMB dated 18.01.2016 wherein in column 11 of the board proceedings it has been clearly mentioned that the disability of the

officer is 'due to rigours and difficult service condition, stress and strain of working condition', therefore the disability is conceded as aggravated by

military service. However the opinion of RMB has been overruled by the competent authority and the Appellate Authority on the ground of disability

first starting when the officer was posted in peace area. In this context the issue of primacy of the opinion of a Medical Board is no more RES

INTEGRA. The same has been upheld by the decision of Honible Apex Court in the case of Ex. Sapper Mohinder Singh in Civil Appeal No 104 of

1993 decided on 14.01.1993.

7. Hence we set aside the impugned order dated 14.03.2017 and uphold the opinion of the RMB and declare the disability of the applicant as

'Aggravated' by military service @20% for life.

8. Keeping in view the fact that the disability of the officer has been held to be aggravated by military service and percentage of the disability has

been assessed @ 20% for life, the same is required to be rounded-off to 50% for life in view of the Government of India, Ministry of Defence Letter

No. 1 (2)/97/1D(Pen-C) dated 31.01.2001 and the law settled by the Hon]]le Supreme Court vide judgement dated 10.12.2014 in the case of Union of

India Vs. Ram Avtar (Civil Appeal No. 418/2012). Hence the applicant's disability @ 20% for life is to be broad banded to 50% for life.

9. In view of the above the O.A. is allowed. The disability of the applicant is to be considered as 'Aggravated' by military service. Additionally the

applicant is entitled to the benefit of broad-banding of disability element from 20/0 to 50%. The respondents are directed to implement the orders

within four months from the date of receipt of this order, failing which, the applicant shall be entitled to interest @ 8% till the date of payment.

10. In view of the above, OA is allowed.

11. No order as to costs.