(2019) 10 AFT CK 0013

In the Armed Forces Tribunal

Case No : Original Application No. 706 Of 2016

R.K. Tayagi APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0013

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

Bench : Division Bench

Advocate : Narender Kaushik, S.D. Windlesh

Final Decision : Allowed

Judgement

1. The applicant through the medium of the instant OA has made the following prayers:

a) To quash the disability pension rejection order dated 25.02.2014.

b) To quash the first appeal dated 25.04.2014 dismissal order date not known not given.

c) To direct the respondent to consider & pay disability pension with consequential benefit.

d) To award cost of application.

e) To pass any other deemed fit Fic proper in the fact of the case.

2. The factual details giving rise to the filing of the present OA are that the applicant joined the Indian Air Force as Ground Training Instructor/Airman

2P August, 1976, after passing necessary education and medical test prescribed for the Trade, wherein he was found medically fit. On attaining the

age of superannuation, the applicant was discharged from service with effect from 3Ist October, 2014 after putting in thirtyeight years of service. On discharge, the Rcicase Medical Board assessed his disability 1Ds (0 Primary Hypertension (Old) at the rate of thirty per cent, (ii) Compound

Commented Fracture Distal 1/3rd Femur (RT) (OFID) ((Nd) at the rate of thirty per cent, (iii) Compound Comminuted Fracture Tibia & Fibuia (R)

(C1FTD) BK Amputation (RT) done (Old) at the rate of sixty per cent; (iv) Compound Comminuted Fracture Tibia & Himla Mid 1/3rd (LT) (Optd)

(Old) at the rate of thirty per ccrit., (v) Dyslipidemia. (Old) at the rate of1-5 per cent and (,11) Type-II DM (Old) at the rate of twenty per cent. The

composite disability was assessed at the rate of ninety per cent for life but neither attributable to nor aggravated by military service, This resulted in

the filing of the present OA.

3. The submission of learned counsel for the applicant is that since the applicant was found mentally and physically fit at the time of enrolment, which

fact is also admitted by the respondents in the counter affidavit, arid did not suffer from any disease, he is entitled to disability pension. In support of

his contention, learned counsel has pla.cei reliance on the decision of the Horeble Supreme Court in Phanun& Singh Vs. Union of Thai and. [(2013 7

SCC 316].

4. Per contra, 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 disabilities, as recorded in Release Medical Board proceedings, are

neither attributable to nor aggravated by military service.

5. We have heard learned counsel on both sides and have also gone though the documents available on record.

6. We have observed that the first disability of the applicant, i.e., ""Primary Hypertension"" started in March 2002. Thereafter, the applicant met with an

accident on 25ch February, 2006 and his right foot got amputed and left leg received fractures. Thereafter, with artificial limb he continued in service

till 314 October, 2004 and was discharged after completing thirty eight years of service. We find that his road traffic accident as per Court of Inquiry

is considered neither attributable to nor aggravated by military service primarily because the applicant was living out of military camp in Civil area and

had gone to meet his parents on a two wheeler without any valid leave or permission. 'Rs other three disabilities post 2006 road accident are related to his left and right leg and are directly linked with his road accident. Hence all these three disabilities are NANA as opined by Court of Inquiry Laid the

Release Medical Board. However, we find that his first disability, Le., Primary Hypertension at the rate of thirty per cent for life which has originated

in the year 2002 has been denied attributability only on the ground that the origin of the disease is in peace station and not in field/HAA or Cl area. We

do not find such a denial to be fair. Peace stations also have their own pressures of military functioning and therefore denial of attributability only on

the ground that it originated in peace is not a just and fair reason. 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. Additionally his last two disabilities, i.e., Chislipidemia (Old) and Typ-e-

ll DM (Old) have first started in the year 2010. However, RMB has denied attributability to both these disease on the ground of being metabolic

disorder/life style disorder with onset in peace area. However, considering that the applicant had serious fracture in left leg and had suffered

amputation of right leg above knee and was functional in IAF service with artificial limb, hence considering all issues we would like to give benefit of

doubt to the applicant and declare both these disease also, i.e., Dyslipidernia. (Old) and Type-II DM (Old) as aggravated by military service.

7. Thus out of six disabilities of the applicant his three disabilities, Le., Primary Hypertension (Old), at the rate of thirty per cent, Dyslipidemia (Old) at

the rate of one to five per cent and Type-11 DM (Old) at the rate of twenty per cent are to be considered as aggravated by military service.

Additionally the composite disability percentage for these three disabilities is to be deemed to be fifty per cent in line with the judgment of HoribIe

Supreme Court in the case of Dharamvir Singh (supra).

8. So far as the rounding off is concerned, in the light of the decision of the Honble Supreme Court in the case of Union of Inca and Ors. Vs Ram

Avtar and Ors. (Civil Appeal No.418 of 2012 decided on 101h December, 2014), we are of the considered opinion that the applicant is entitled to the

benefit of rounding off from composite fifty per cent to seventy nve per cent for life with effect from the date of his discharge from service, i.e., 3 Ist

October, 2014.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 can-y interest at the rate of eight per cent till the actual parcent is made.

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