
(2019) 10 AFT CK 0045
In the Armed Forces Tribunal
Case No : Original Application No. 349 Of 2018

Satish Chandra Tripathi

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 04-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0045

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

Bench : Division Bench

Advocate : Shailendra Kumar Singh, T.S. Khhehar

Final Decision : Allowed

Judgement

1. The applicant, Sgt Satish Chandra Tripathi, through the medium of the instant O.A, medium of the instant O.A,

(i) To quash or set aside the respondent No 3 letter dated 15 Jun 2017 (Annexure A-1 of OA) and AFRO letter dated 10 Aug 2009 (Annexure A-3 of OA).

(ii) To issue order or directions to the respondents to grant disability pension to the applicant with effect from 01.02.2010 (date of discharge) with all

consequential benefits including rounding off benefit from 30% to 50% in terms of Govt of India letter dated 31 Jan 2001 and judgment passed by Hon

/1)1e Apex Court in case of Ram Avtar vs UOI & Others.

(iii) Any other relief as considered proper by the Honible Tribunal be awarded in favour of the applicant.

2. The factual matrix of the case is that the applicant was enrolled in the Indian Air Force on 01.02.1990 and was discharged from service on

31.01.2010 in low medical category A4G2 (P). At the time of joining the service,

the applicant was medically examined and found fit in all respects. In course of time, he was promoted to the rank of Sergeant. At the time of discharge, the RMB assessed his disability ""Primary Hypertension"" @ 30% for life and opined it to be neither attributable to nor aggravated by military service (NANA). Though the applicant was granted service pension, no disability pension was granted. His claim for disability pension was rejected vide letter dated 10.08.2009, against which the applicant filed a first appeal which was turned down vide order dated 15.06.2017 because it was filed beyond the stipulated period. Being aggrieved, the present O.A has been filed.

3. Learned counsel for the applicant pointed out that at the time when the applicant joined the Air Force, he was medically examined and found to be in Shape-1 and the disability was contracted after completion of two years of service i.e. w.e.f. 01.12.1992 which resulted in the downgrading of his medical category A4G2 (T). The applicant was allowed to continue in service being in low medical category. The rejection of the claim of the applicant for disability pension on the ground that there is no causal association of onset of 'Primary Hypertension' with service is illegal, therefore, conceding the disability as neither attributable to nor aggravated by military service cannot be justified. Learned counsel also contended that the case of the applicant is squarely covered by the decision of the Hon`ble Supreme Court in Dharamvir Singh v. Union of India and Others (2013) 7 SCC 316 and, therefore, the applicant is entitled to disability pension.

4. Per contra, the learned counsel for the respondents submitted that the disability of the applicant had originated in peace area and had rightly been opined as NANA by the RMB. Hence his claim for disability pension has rightly been rejected by the competent authority. He pleaded for the O.A to be dismissed.

5. Having heard the learned counsel for the parties and perusal of the records, the questions that falls for our consideration is as to whether the disability of the applicant is attributable to or aggravated by military service?

6. On scrutiny, we have observed that the applicant's disability was first detected on 01.12.1992 i.e. after about two years of service and prior to that

the applicant was not suffering from any ailment. The RMB has denied attributability on the ground that the disease is not connected with service.

However, considering all issues we are of the opinion that stress and strain adversely affects this disease hence we would like to give benefit of doubt

in favour of the applicant. Thus we are of the considered opinion that the disability 'Primary Hypertension' is to be considered as aggravated by

military service in line with the law settled on this matter by the Honble Apex Court in the case of Dharamvir Singh (supra). Additionally, the applicant

will also be eligible for the benefit of rounding off to 50%, 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).

7. Resultantly, the O.A is allowed. The impugned orders are set aside. The applicant's disability 'Primary Hypertension' is to be considered as

aggravated by military service. The applicant is entitled to disability element of disability pension @ 30% for life, which shall be broad banded to 50%

for life from the date of his discharge from service. However, due to law of limitations settled by the Honble Supreme Court in the case of Shiv Dass

v. Union of India and others (2007 (3) SLR 445), the arrears of disability element will be restricted to three years before the date of filing of the

instant O.A. The date of filing of this O.A is 06.02.2018. This order is to be implemented by the respondents within four months from the date of

receipt of a certified copy of this order. Default will invite interest @ 8% per annum.

8 No order as to costs.