
(2020) 06 AFT CK 0004
In the Armed Forces Tribunal
Case No : Original Application No. 790 Of 2017

Satish Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 25-06-2020

Acts Referred:

Citation : (2020) 06 AFT CK 0004

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

Bench : Division Bench

Advocate : Praveen Kumar, Barkha Babbar

Final Decision : Disposed Of

Judgement

1. The applicant, Ex MWO Satish Kumar, through the medium of the instant Original Application is seeking the following reliefs:

(a) Quash and set aside the impugned letter dated 23.02.2017.

(b) Direct Respondents to grant Disability Pension @40% and also Rounding off to @50% for life to the applicant with effect from 01 Nov 2002 i.e.

date of discharge 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 facts and circumstances of the case.

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Air Force on 26.04.1963 and was discharged on 31.10.2002 in Low

Medical Category on fulfilling the conditions of his enrolment. At the time of retirement from service, the Release Medical Board (RMB) held at 12

Wing AF on 08.02.2002 assessed his disabilities (i) Primary Hypertension (401) Old V- 67 @30% for five years (ii) MVP (427) Old V-07 @30%

for five years, (iii) WPW Syndrome (426) Old V-67 @19% for five years and (iv)

CAD (411) Old V-69 @19% for five years, composite @40%

for and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant approached the respondents for grant of disability pension and its rounding off which was rejected by the respondents vide order dated 23.02.2017. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Air

Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Air Force. The diseases of the

applicant were contracted during the service, hence it is attributable to and aggravated by Air Force Service. He pleaded that various Benches of

Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof.

He further submitted that since all disabilities of the applicant are heart related with composite disability @40%, he is restricting his prayer for only one

disability i.e. 'Primary Hypertension (401) Old V-67' @30% for grant of disability element.

4. On the other hand, Ld. Counsel for the respondents contended that composite disability of the applicant @40% for five years has been regarded as

NANA by the RMB, hence applicant is not entitled to disability pension. He pleaded for dismissal of the Original Application.

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 question which needs to be answered is straight and simple i.e. whether the disabilities of the applicant are

attributable to or aggravated by Military Service?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of Dharamvir Singh Versus Union of

India & Others, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations,

Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same.

7. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the first

disability 'Primary Hypertension (401) Old V-67' is neither attributable to nor aggravated (NANA) by service because it is not connected with service.

We find this explanation ""Not connected with service"" to be cryptic and inadequate to justify denial of attributability/aggravation. The applicant had this

disease for the first time after 33 years of Indian Air Force service in the year 1997. We are therefore of the considered opinion that the benefit of

doubt in these circumstances should be given to the applicant in view of Dharamvir Singh vs Union of India & Ors (supra) and the disability of the

applicant should be considered as aggravated by military service. However considering all issues related with all other disabilities, we agree with the

opinion of the RMB that the second, third and fourth disability i.e. MVP (427) Old V-07, WPW Syndrome (426) Old V-67 and CAD (411) Old V-69

are not connected with service hence NANA.

8. Since the applicant's RMB was valid for five years w.e.f. 31.10.2002, however, the disease being of a permanent nature, it is to be deemed as an

RMB for life in light of Hon'ble Supreme Court Judgment in Civil Appeal No.(s) 5970 of 2019 Commander Rakesh Pande Versus Union of India,

decided on 28.11.2019. of filing this Original Application. The date of filing of this Original Application is 26.04.2017. Respondents are directed to give

effect to the order within four months from the date of receipt of copy of this order, failing which it shall attract interest @6% per annum till the date

of payment.

10. No order as to costs.

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

Pronounced in the open court on 25 June, 2020.