(2019) 10 AFT CK 0022

In the Armed Forces Tribunal

Case No : Original Application No. 178 Of 2017

Sawaliya Singh APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0022

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

Bench : Division Bench

Advocate : V.S. Kadian, V. Pattabhi Ram

Final Decision : Allowed

Judgement

1. The applicant by way of this CA secks the following reliefs:

(a) Quash and set aside the impugned letter No.LC/Pcn/6001Legal Noticri 110662 dated 16.12.2016, and/or

(b) Direct the respondents to treat the disability of the applicant as athibutable to or aggravated by military service and grant hint disability pension

including service element and disability clement with the benefits of rounding off, and/or

(c) Direct respondents to pay the due. an-ears .01 disability pension with interest @ 12% p.a. from the date of retirement with all the consequential

benefits.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in

favour of the applicant and against the respondents.

2. The applicant was enrolled in the Indian Navy on 7th July 1981, after going through a thorough medical examination, wherein he was found

medically tit The applicant was discharged from service on 31st july, 2016 after putting in thirty five years service in low medical category. The

Release Medical Board assessed his disabilities (0 'PRIMARY HYPERTENSION ICD 1 10.0"" and (ii) ""TYPE-II DIABETES MELLITUS ICD E-

11"" at the tale of Ihirly and twentyper cent respectively for life; neither attributable to nor aggravated and also not connected with military service,.

The composite assessment for the disabilities was, however, assessed at forty per cent for life. It is in this perspective that the applicant has preferred

the instant OA.

3. Learned counsel for the applicant has contended that since the applicant was found mentally and physically fit for service in the Indian Navy and

there is no mention in his service records that the applicant was suffering from any disease at the time of enrolment, he is entitled to disability pension.

In support of his contentions, learned counsel has placed reliance on the decision of the flon'ble Supreme Court in Dharamvir Singh Vs. Union of India

and Ors. [(2013 7 SCC 3161.

4. Per contra, the respondents have contended that both the disabilities of the 'ippIicanl, viz.,(i) ""PRIMARY HYPERTENSION CD1 10.0' and (ii)

TYPE-II DIABETES MELLIIIIS [CI) E-11"" at the rate of forty per cent (composite), as recorded in Release Medical Board proceedings, are

neither attributable to nor aggravated by military service, therefore, the applicant is not entitled for disability pension. He further contended that

therefore the OA may be dismissed.

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

6. The question which needs to be considered by us is as to whether both the disabilities of the applicant are attributable to or aggravated by military

service.

7. We have noted that both the diseases have first started simultaneously on 27111 July, 2013, i.e., after thirty two years of service,As far as first

disability is concerned, i.e., ""PRIMARY HYPERTENSION 1CD 1 10.0"", it is clear that there can be many reasons for causing this disease.

However, the Release Medical Board has denied attributability of this disease only on the ground that it ""originated during ashore service"". We do not

think that such a brief reason for denial of this attributability in this disease is just. We also fee! that Naval duties ashore also have their own share of

pressures iand stresses. We, therefore, are of the considered opinion that ""PRIMARY HYFERITNSION ICD I 10.0"" should be considered as

aggravated by military service. Similarly far as the second ID TYPE-11 DIABETES MELLITUS ICD E-1 1 is concerned, it has also been opined as

neither attributable to nor aggravated by military service on grounds of origin of disease on ashore duties. In this case also we are not convinced that

stress and strain of Naval service does not exist in Ashore duties and only exists in 'AFLOAT' duties. Hence we extend of benefit of doubt and

declare this disease as aggravated by military service. Thus both the disabilities of the applicant at the composite rate of forty per cent are to be

considered as aggravated by military service in line with the Hon'ble Supreme Court judgment in the case of Phararnirir Singh (supra).

8. Additionally, in the light of the decision of the Hon'bie Supreme Court in the case of Union of India and Or. Rarn Avtar and Ors. (Civil Appeal

No.418 of 2012 decided on 1014 December, 2014), we are of the considered opinion that the applicant is entitled to the benefit of rounding off from

composite forty per cent to fifty per cent for life with effect from the date of his discharge from service, i.e., 31st july, 2016.

9. In view of above the OA is allowed. Both disabilities of the applicant, i.e., ""PRIMARY HYPERTENSION 1CD 1 10.0"" and ID TYFE-II

DIABETES MELII-W5 ICE) E-11 at the composite rate of forty per cent are considered as aggravated by military service. 'The applicant's disability

al the rate of forty per cent is rounded off to fifty per cent for life. The rcspi,Indents are directed to comply with this order within four months from

the date of receipt of a copy of this order. In clefmilt it will carry interest at the rate of eight per cent till the actual payment is made.

