
(2020) 02 AFT CK 0067

In the Armed Forces Tribunal

Case No : Original Application No. 366 Of 2018

S.S. Rathi

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 24-02-2020

Acts Referred:

Citation : (2020) 02 AFT CK 0067

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

Bench : Division Bench

Advocate : Praveen Kumar, V S Tomar

Final Decision : Dismissed

Judgement

1. The applicant through the medium of the instant Original Application is seeking the following reliefs:-

a) Quash and set aside the impugned letters dated 07.11.2016.

b) Direct respondents to grant disability pension @ 50% and also rounding off the same from @ 50% to @ 75% for life to the applicant

with effect from 01 Dec. 2013. i.e., the 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. Brief facts of the case are that the applicant was enrolled in Indian Air Force on 27.11.1973 on fulfilling the conditions of his enrolment. At the time

of superannuation from service on 30 11.2013, the Release Medical Board (RMB) assessed his disabilities ""(i) CAD(unstable Angina) PICA

SVD+LAD post PTCA with Stent to LAD(old) @ 30% (ii) Primary Hypertension @ 30% for life and composite assessment of both the disabilities

was 50% for life but opined the disabilities to be neither attributable to nor aggravated (NANA) by military service. The representation made by the applicant against rejection of disability pension was rejected by the respondents vide their letter dated 07.11.2016. Hence the present O A

3. Learned counsel for the applicant pleaded that at the time of enrolment, he was found to be fully fit and there is no note in the service documents

that he was suffering from any disease at the time of enrolment in Army. The diseases of the applicant were contracted during the service, hence it is

attributable to and aggravated by Military 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.

4. On the other hand, learned counsel for the respondents contended that disability of the applicant ""(i) CAD(unstable Angina) PICA SVD+LAD post

PICA with Stent to LAD(old) @ 30% (ii) Primary Hypertension @ 30% for life and composite assessment of both the disabilities was 50% for life

but opined the disabilities to be neither attributable to nor aggravated (NANA) by military service. hence his claim for grant of disability pension has

rightly been rejected. He pleaded for dismissal of the OA.

5. We have heard learned counsel for the applicant as also learned counsel for the respondents. We have also gone through the Release Medical

Board proceedings. The only question which needs to be answered is straight and simple, i.e., whether the disabilities of applicant are attributable to or

aggravated by military service?

6. The law on attributability of disability pension has been settled by Hon'ble Supreme Court in the case of Dharamvir Singh Vs. Union of India and

Ors. (2013) 7 SCC 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 have noticed that the RMB has denied attributability on two grounds. The first ground is

that the disease was not connected with service and the second ground was that the onset of disease was at a peace station. However, we have

noted that the opinion enclosed with RMB of Specialist Medical Officer, i.e .

Colonel R. Girish Senior Advisor, Cardiology & Medicine, has opined

that the applicant is a Reformed smoker. It is the normal practice that smokers give up smoking only after onset of heart disease. In this case we have

tried to understand the impact of smoking on health We have noted that it is established beyond doubt in medical literature that smoking increases the

chances of not only heart disease but also various other diseases. hence, cigarette packets have to carry a mandatory warning on its health hazard

Additionally, the medical literature is full of evidence that people who smoke are 2 to 4 times more likely to get heart diseases. The disability of the

applicant is heart related. Thus. considering the totality of circumstances, we are of the opinion that we have no valid reason to give benefit of doubt to

applicant and interfere with the opinion of medical board.

8. In this context we would like to quote the opinion of Hon'ble Supreme Court in Civil Appeal No. 1837/2009 titled Union of India & Another vs. Ex.

Rfn Ravinder Kumar, the Hon'ble Apex Court vide its order dated 23.05.2012 had stated that:-

Opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension

brushing aside the opinion of the Medical Authorities, record the specific finding to the effect that the disability was neither attributable to

nor aggravated by military service, the court should not ignore such a finding for the reason that Medical Board is specialized authority

composed of expert medical doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability

due to military service and the conditions of service resulting in disablement of the individual""

9. Additionally, we would also like to quote the opinion of Hon'ble Supreme Court on the expertise of Medical Board in Civil Appeal No 7672 of 2019

in Ex. Cfn Narsingh Yadav vs. Union of India & Ors. as under:-

21. Though, the opinion of the Medical Board is subject to judicial review but the Courts are not possessed of expertise to dispute such

report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of

the Review Medical Board.

10. In view of the above, we are of the opinion that we have no valid reasons to

interfere with the opinion of the RMB which has declared both the heart diseases of applicant as NANA.

11. Accordingly, the Original Application No. 313 of 2017 is liable to be dismissed and is dismissed.

12. Pending MA, if any, shall also stands disposed off.

13. No order as to costs.