
(2020) 03 AFT CK 0046

In the Armed Forces Tribunal

Case No : Original Application No. 943 Of 2018, Miscellaneous Application No. 817 Of 2018

Subhash Kumar Bose

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 11-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0046

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

Bench : Division Bench

Advocate : V.S. Kadian, Anil Gautam

Final Decision : Disposed Of

Judgement

M.A. No. 817/2018

1. For the reasons carved out in the Application, the delay of 2190 days in filing the Original Application is hereby condoned.

M.A. stands disposed off.

O.A. No. 943/2018

Aggrieved by the denial of disability pension, the applicant has filed the instant O.A seeking the following reliefs:

(a) Quash and set aside the impugned letter No. 12681/IC-37591K/T-9/MP-5(B)/75/2011/Appeal/AG/PS-4 (Imp-II) dated 06.03.2012. And/or

(b) Direct respondents to treat the disability i.e. ID (iii) PRIMARY HYPERTENSION of the applicant as attributable to/or aggravated by military

service and grant him disability element of pension of composite assessed of all three disabilities with benefits of broad banding/rounding off the same

to 75%. And/or

(c) Direct respondents to pay the due arrears of disability element of 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.

2. The brief facts, as averred by the learned counsel for both the parties are that the applicant was commissioned In the Indian Army on 01.09.1979

and retired from service on superannuation w.e.f. 31.01.2011 in low medical category after rendering more than 31 years of service. The Release

Medical Board (RMB) held at Military Hospital, Secunderabad on 03.09.2008 assessed his disabilities (i) 'FRACTURE HEAD OF RADIUS (RT)

OPTD' @ 15-19 %for life, (ii) 'FRACTURE SPINE OF TIBIA (RT)' @ 15-19 % for life and (iii) 'PRIMARY HYPERTENSION' @ 30% for life.

The composite assessment for all the three disabilities was @ 50% for life and net assessment qualifying for disability pension was 30% for life.

However, the RMB opined that first and second ID of the applicant was 'Attributable to Service' whereas third ID was neither attributable to nor

aggravated by military service (NANA). The applicant is already in receipt of 30% disability element for his first and second disabilities. Now he has

filed this 'Primary Hypertension'.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was commissioned in the Indian Army and any disability

not recorded at the time of commission should be presumed to have been caused subsequently. The action of the respondents in granting only two

disabilities and denying the third disability i.e. 'Primary Hypertension' to the applicant is illegal. In this regard, he relied on the decision of the Hon'ble

Supreme Court in Dharamvir Singh 14 Union of India and others, (2013) 7 SCC 316 and submitted that for the purpose of determining attributability of

the diseases to military service, what is material is whether the disabilities were detected during the initial pre-commissioning medical tests and if no

disability was detected at that time, then it is to be presumed that the disabilities arose while in service, therefore, the third disability i.e. 'Primary

Hypertension' of the applicant is to be considered as aggravated by service and he is entitled to get enhanced disability pension @ 75% for life for all

the three disabilities.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that the applicant is already in receipt of 30%

disability element for his first and second ID i.e. (i) 'FRACTURE HEAD OF RADIUS (RT) OPTD' and (ii) 'FRACTURE SPINE OF TIBIA (RT)'

being Attributable to service and his third disability i.e. 'Primary Hypertension', assessed @ 30% for life is NANA. As such his claim for disability

element for his third disability i.e. 'Primary Hypertension' has rightly been rejected by the respondents. He submitted that the instant Original

Application does not have any merit and the same is to be dismissed.

5. Having heard the learned counsel for both the parties and perused the records, the only question that needs to be answered is, whether the third

disability i.e. 'Primary Hypertension' of the applicant is attributable to or aggravated by military service?

6. We have noted that the applicant is already in receipt of 30% disability element for his first and second ID i.e. (i) 'FRACTURE HEAD OF

RADIUS (RT) OPTD' and (ii) 'FRACTURE SPINE OF TIBIA (RT)' being Attributable to service and his third disability i.e. 'Primary Hypertension'

is NANA.

7. The opinion of the same RMB with regard to first and second disease has been accepted selectively by the applicant and for the third disease i.e.

'Primary Hypertension' he is challenging the RMB. In this context, we have tried to understand the disabilities of the applicant. We have noted that his

first disability 'FRACTURE HEAD OF RADIUS (RT) OPTD' is related to a fracture in elbow and his second disability 'FRACTURE SPINE OF

TIBIA (RT)1 is related to fracture in his knee. Both these disabilities have been conceded as attributable by the RMB of the applicant. As far as the

third disability is concerned i.e. 'Primary Hypertension', we have noted that it has started after about 3 years and 08 months of the first two disabilities

and the RMB has noted in its records that the officer is 15% overweight at the time of RMB. Additionally the medical literature indicates intricate

interconnectivity between various health markers and the diseases of an individual and hence such matters are best left to the expertise of medical

experts. Thus, since the same medical board has conceded attributability for first two disabilities and declared the third one as NANA, we don't find

any valid reason to interfere with the opinion of the Medical Board.

8. In this regard, the respect for expertise of a Medical Board has been clarified by Hon'ble Supreme Court in its judgment dated 03.10.2019 in Civil

Appeal No 7672 of 2019 in Ex Cfn Narsingh Yadav vs Union of India & Ors. Relevant part of the aforesaid judgment is as given below:-

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.

9. In view of the above, this Original Application is liable to be dismissed, hence, dismissed.

10. No order as to costs.

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

Pronounced in the open Court on 11th March, 2020.