(2019) 10 AFT CK 0048

In the Armed Forces Tribunal

Case No : Original Application No. 810 Of 2017

Suranjan Singh APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0048

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

Bench : Division Bench

Advocate : V.S. Kadian, Shyam Narayan

Final Decision : Allowed

Judgement

1. Aggrieved by the impugned order dated 26.02.2017 denying him disability element of pension, the applicant has filed the instant 0.A seeking the

following reliefs:

(a) Quash and set aside the impugned letter No.NER/10212595/LC-3 dated 26.02.2017, and /or

(b) Direct the respondent to treat the disability of the applicant as attributable to or aggravated by military service and grant him disability element of

pension as applicable by rounding off/broad banding benefits in terms of Govt of India, Min of Defence letter No.1(2)/97/D(Pen-C) dated 31.01.2001,

and/or

(c) Direct respondents to pay the due arrears of disability element of pension with interest Â©12% per annum from the date of retirement with all the

consequential benefits.

(d) Any other relief which the Honible 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 facts of the case, in brief, are that the applicant was enrolled in the Indian Army on 19.02.1980 and was discharged from service on

31.07.1998. Thereafter, the applicant re-enrolled in the Defence Security Corps (DSC) on 03.08.1999 and was invalided out from DSC service on

30.09.2016, in low medical category after attaining the age of superannuation. The Release Medical Board (RMB) held at Base Hospital, Delhi Cantt.

on 14.07.2016 assessed his disabilities (i) 'LT MCA INFRACT' Â©30% for life and (ii) 'DIABETES MELLITUS TYPE II' Â©200/0 for life,

Composite Â©40% for life. However, the RMB opined that the diseases of the applicant were neither attributable to nor aggravated by military

service (NANA). On 03.01.2017, the applicant made a Legal Notice cum Representation claiming grant of disability pension, which was rejected by

the competent authority vide order dated 26.02.2017. Hence the instant Original Application.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in DSC service and any disability not

recorded at the time of re-enrolment should be presumed to have been caused subsequently. The action of the respondents in denying disability

pension to the applicant is illegal. In this regard, he relied on the decision of the Hon'ble Supreme Court in Dharamvir Singh V. 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 disabilities of the applicant are to be considered as aggravated by service and he is

entitled to get disability pension Â© 400/and the same is to be broad banded to 50%.

4. On the other hand, learned counsel for the respondents submitted that though the RMB had assessed the disabilities of the applicant @ 40%, it

opined that the disabilities are NANA. As such his claim for disability pension 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

disabilities of the applicant are attributable to or aggravated by military service?

6. We have noted that the only reason for which the disabilities have been opined as NANA by the RMB is that the diseases have originated in peace

area and there is no close time association with Fd/HAA/CI Ops tenure. However, on further scrutiny, we have observed that the disabilities were

first detected on 18.01.2016 whereas the applicant was re-enrolled in DSC on 03.08.1999 i.e. after about 16 years of DSC service. We are therefore

of the considered opinion that the reasons given in RMB for declaring diseases as NANA are very brief and cryptic in nature and do not adequately

explain the denial of attributability. We don't agree with the view that there is no stress and strain of service in military stations located in peace areas.

Hence, we are inclined to give benefit of doubt in favour of the applicant. Thus we are of the considered opinion that the disabilities 'LT MCA

INFRACT' and 'DIABETES MELLITUS TYPE II' are to be considered as aggravated by military service because stress and strain of military

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

also be eligible for the benefit of rounding off to 40%, in terms of the decision of Hontle Supreme Court in Union of India and others v, Ram Avtar

(Civil Appeal No 418 of 2012 dated 10.12.2014).

7. Resultantly, the G.A. is allowed. The impugned order is set aside. The applicant's disabilities (i) 'LT MCA INFRACT' Â©3O% for life and (ii)

'DIABETES MELLITUS TYPE II' @20% for life, Composite assessed Â©40% for life, are to be considered as aggravated by military service. The

applicant is entitled to disability element of disability pension @40% for life, which shall be broad banded to 50% for life from the date of his discharge

from service i.e. 30.09.2016. Ordered accordingly. To be implemented by the respondents within four months from the date of receipt of a copy of

this order. Default will invite interest @ 8% per annum.

8. No order as to costs.