
(2019) 10 AFT CK 0008
In the Armed Forces Tribunal
Case No : Original Application No. 882 Of 2017

Yogendra Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0008

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 app[icant, Ex. HFO Yogendra Singh, through the medium of the instant Original Application is seeking the following reliefs:

(a) Quash and set aside the impugned ietter No Air HQ/99798/1/680675/DAV/DP/CC dated 21.04.2017 and/or

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

pension g50% by rounding off/broad banding benefits. And/or

(c) Direct respondents to pay the due arrears of disability element of pension with interest g12% p.a. from the date of his discharge. And /or

(d) and was discharged

(d) Any other relief which the Honble Tribunal may deem fit and proper in the fact and circumstances of the case.

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Air Force on 19.07.1982 from service on 31.12.2016 in low medical

category. The Release Medical Board (R1v1B) held at AF Stn Jammu on

21.12.2016 assessed his disability 'CAD-STE IWMI (STK+) MILD LV

SYSDYSFUNCTION, RT DOM SVD-RCAI PCI TO RCA (DES) DONE (I 25.2)' @ 300/a for life. However, the RMB opined that the disease of the

applicant was neither attributable to nor aggravated by military service (NANA). The applicant's claim for grant of disability pension was rejected by

the respondents vide order dated 21.04.2017. Hence the instant Original Application

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

recorded at the time of 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 Honble Supreme Court in Dharamvir Singh vs. Union of India and others,

(2013) 7 SCC 316 and submitted that for the purpose of determining attributability of the disease to military service, what is material is whether the

disability was 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

disability arose while in service, therefore, the disability of the applicant is to be considered as aggravated by service and he is entitled to get disability

pension @ 30% for life and the same is to be broad banded to 50%.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that though the RMB had assessed the

disability of the applicant @ 30%, it opined that the disability is 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 disability

of the applicant is attributable to or aggravated by military service?

6. We have noted that the only reason for which the disability has been opined as NANA by the RMB is that 'As per charter of duties dated 21 Dec-

16: The disability was first detected on 02.12.2016 whereas the applicant was enrolled in Air Force on 19.07.1982 i.e. after about more than 34 years

of service. We are therefore of the considered opinion that the reasons given in RMB for declaring disease as NANA is very brief and cryptic in

nature and do not adequately explain the denial of attributability. Hence, we would like to extend benefit of doubt in favour of applicant. Thus we are

of the considered opinion that the disability 'CAD-STE IWMI (STK+) MILD LV SYSDYSFUNCTION, RI DOM SIM-RCA, PCI TO RCA (DES)

DONE (I 25.2)t is to be considered as aggravated by military in line with the law settled on this matter by the Honible Apex Court in the case of

Dharainvir Singh (supra), Additionally, the applicant will also be eligible for the benefit of rounding off to 50%, in terms of the decision of Horthie

Supreme Court in Union of India and others v. Ram Avtar (Civil Appeal No 418 of 2012 dated 10.12.2014).

7. Resultantly, the O.A. is allowed. The impugned orders are set aside. The applicant's disability 'CAD-STE IWMI (STK+) MILD LV

SYSDYSFUNCTIONI RT DOM SVD-RCA, PC1 TO RCA (DES) DONE (I 25.2)1 @30% for life, Is to be considered as aggravated by military service

and his disability element of pension is to be rounded off from 30% to 50% for life. The applicant is entitled to disability element of disability pension @

30% for life, which shall be broad banded to 50% for life from the date of his discharge from service i.e. 31.12.2016. Ordered accordingly. To be

implemented by the respondents within four months from the date of receipt of a copy of this order. Default wilJ invite interest @ 80/o per annum.

8. No order as to costs.