
(20) 06 AFT CK 0009

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 400 Of 2018

Bindeshwari Mandal

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision: June 11, 0020

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

Bench: Division Bench

Advocate: V.S. Kadian, V.S. Tonnar

Final Decision: Disposed Of

Judgement

1. The applicant, Ex. MWO Bindeshwari Mandal, through the medium of the instant Original Application is seeking the following reliefs:

(a) Quash and set aside the impugned letter No Air HQ/99798/2'Appea1/197/617259/DP/AV-111 (Appeals) dated 31.01.2017. And/or

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

pension with benefits of broad banding/ rounding off the same. 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. Briefly stated facts of the case are that the applicant was enrolled in the Indian Air Force on 07.11.1972 and was discharged on 31.01.2013 in Low

Medical Category on fulfilling the conditions of his enrolment. At the time of retirement from service, the Release Medical Board (RMB) held on

14.01.2012 assessed his disabilities (i) 'PRIMARY HYPERTENSION (OLD) Z0.09'; @30% for life, (ii) 'DM TYPE-II (OLD) Z0.09' @15-19% for

life and (iii) 'CVA (OLD) Z0.09' @70% for life, composite 80% for life and opined the disability to be neither attributable to nor aggravated (NANA)

by service due to disabilities occurred in peace. The applicant's initial claim for grant of disability element was rejected by the respondents vide their

letter dated 07.11.2012. The applicants first and second appeals have also been rejected by the respondents vide their letters dated 29.01.2015 and

27.02.2015 respectively. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Air

Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Air Force. 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,

as such the applicant is entitled to disability element and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that composite disability of the applicant @80% for life has been regarded as

NANA by the RMB, hence applicant is not entitled to disability element. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board

proceedings as well as the records. The only question which needs to be answered is straight and simple i.e. whether the disabilities of the applicant

are attributable to or aggravated by Military Service?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of Dharamvir Singh Versus Union of

India & Others, reported in (2013) 7 Supreme Court Cases 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. We have noticed that this is a case where applicant had the onset of all his three diseases i.e. 'PRIMARY HYPERTENSION (OLD) Z0.09', 'DM

TYPE-II (OLD) Z0.09 and 'CVA (OLD) Z0.09' in December, 2008. The third disease i.e. 'CVA (OLD) Z0.091 is basically the medical term for

'STROKE' i.e. when blood flow to a part of brain is stopped either by a blockage or a rupture of blood vessel. Additionally, in medical literature it is

well known that Primary Hypertension puts an individual to higher risk of a stroke.

8. Thus in the above mentioned situation we have noted that the RMB has denied attributability to the applicant on the ground that all the three

diseases have originated in peace and have no correlation with service. In this case after considering all the relevant issues we agree with the opinion

of the medical board that the last two disease i.e. 'DM TYPE-II (OLD) Z0.09' and 'CVA (OLD) Z0.091 are NANA. However, we are of the view

that benefit of doubt should be given to the applicant for his first disease i.e. 'PRIMARY HYPERTENSION (OLD) Z0.09' in terms of the law settled

on this matter by Dharamvir Singh vs Union of India & Ors (supra). Hence, we consider the first disability of the applicant i.e. 'PRIMARY

HYPERTENSION (OLD) Z0.091 as aggravated by military service.

9. Additionally in view of Honible Supreme Court judgment in the case of Union of India and Ors Vs Ram Avtar & ors (Civil appeal No 418 of 2012

decided on 10th December 2014) we are of the opinion that the applicant is entitled to the benefit of rounding off from 30% to 50% for life from the

date of his discharge.

11. No order as to costs.

12. Pending application(s), if any, also stand disposed of.

Pronounced in the open court on 17th June 2020.