

**(20) 06 AFT CK 0013**

**Armed Forces Tribunal Principal Bench, New Delhi**

**Case No:** Original Application No. 815 Of 2017

Yogendra Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

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**Date of Decision:** June 17, 0020

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

**Bench:** Division Bench

**Advocate:** V.S. Kadian, K.K. Tyagi

**Final Decision:** Dismissed

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### **Judgement**

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

(a) Quash and set aside the impugned letter No Air HQ/99798/1/283316/DAV/DP/CC dated 15.03.2017.

And/or

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

pension with benefits of rounding off/broad banding of the disability element.

And/or

(c) Direct respondents to pay the due arrears of disability pension with interest @ 12% p.a. from the date of his discharge. And/or

(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 enrolled in the Indian Air Force on 08.07.1966 and

discharged from service on 31.07.2005 after rendering more than 39 years of service. The Release Medical Board (RMB) held at 17 Wing, Air Force

on 23.09.2004 assessed his disabilities (i) 'ISCHAEMIC HEART DISEASE (OLD)' @ 30 % and (ii) 'OBESITY (OLD)' @ 1-5%; composite @

30% for five years. 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 06.03.2006 and his first appeal was

rejected vide order dated 18.12.2006, hence the instant Original Application.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in Naval 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 not granting 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 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 @ 200/c for life and the same is to be broad banded to 50% for life.4. On the other hand, learned counsel for the respondents has

filed the Counter Affidavit and submitted that though the RMB had assessed the disabilities of the applicant composite @ 30% for five years, it

opined that the disabilities are NANA and constitutional disorder not connected with service. 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 applicant suffered both the disabilities simultaneously in March 1996. We have also noted that the vulnerability to heart

disease is increased due to OBESITY. We have also noted that when a soldier is put in 'OBESITY' category, it means that he is 30 over and above of his acceptable Body Mass Index (BMI). BMI is defined as a person's weight with respect to his height. Obesity also reflects excessive fat accumulation in the body and is known to make a person more vulnerable to various diseases. It points out that the applicant has been in overweight category i.e. BMI between 25 & 29.9 for long before being declared obese. This also clearly points out that the applicant has been overweight i.e.

BMI 25- 29.9 well before March 1996 when he was found to be 'OBESSE'.

7. In the above situation we feel that a soldier has special responsibility to keep himself fully fit. Being overweight to the extent of being placed in

lower medical category amounts to being negligent towards own health and also amounts to an invitation to life style disease including IHD. Thus in

the above scenario when the applicant has continued to remain 'OBESSE' for 08 years i.e. from 1996 to 2005, we are of the opinion that there is no

ground to give any benefit of doubt to the applicant. We are therefore, in agreement with the opinion of the RMB that both the disabilities of the

applicant are not connected with service and hence, are NANA. In a similar case Hon'ble Supreme Court has dismissed the Civil Appeal (Diary No.

21017/2019) Gyanendra Singh Versus Union of India & Others, arising out of Judgment and order dated 20.02.2019 passed by this Tribunal in O.A.

No. 1656 of 2016.

8. In view of the above, since the applicant's disabilities have been held to be NANA by the RMB with cogent reasons mentioned therein, we decline

to grant disability pension to the applicant in terms of Hon'ble Supreme Court judgment as quoted above.

9. Thus, the applicant has failed to make out a case for himself. Hence, 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 17th June 2020.