
(20) 06 AFT CK 0025

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 805 Of 2017

Satyendra Prasad

APPELLANT

Vs

Union Of India And
Others

RESPONDENT

Date of Decision: June 17, 0020

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

Bench: Division Bench

Advocate: Yogesh Kumar, V.S. Mahndiyani

Final Decision: Disposed Of

Judgement

1. Aggrieved by the impugned order dated 23.02.2017, denying him disability pension, the applicant has filed the instant O.A seeking the following

reliefs:

(a) Quash and set aside the impugned order no. Air HQ/99798/1/716536/DAV/DP/CC dated 23.02.2017 passed by Respondent No. 3.

(b) Allow the disability element of the pension percentage of which was suggested by the Release Medical Board as 30% composite in nature.

(c) The applicant further also may be given benefit of the broad banding of the same to 50% and interest, as entitled in view of the order passed by

the Hon'ble Supreme Court on 10.12.2014 in Union of India vs. Ram Avtar as well as relief granted by this Hon'ble 1 Tribunal while deciding OA No.

814/2016, titled as Sgt Yogesh Kumar Vs UOI & Ors. vide order dated 10.03.2017.

(d) Issue such other order/direction as may be deemed appropriate in the facts 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 10.12.1986 and was discharged from service on

31.12.2006, in low medical category after having completed his terms of engagement i.e. 20 years of service. The Release Medical Board (RMB) has

assessed his disability 'PRIMARY HYPERTENSION' @ 30% for two years as neither attributable to nor aggravated by military service (NANA).

Disability pension claim of the applicant was rejected vide order dated 23.02.2017. Hence the instant O.A.

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

the time of recruitment 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 the case of 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 enrolment medical board 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 military service and he is entitled to get

disability pension @ 30% and the same is to be rounded off to 50%.

4. On the other hand, learned counsel for the respondents submitted that though the RMB had assessed the disability of the applicant @ 30% for two

years, it opined that the disability is NANA. The disease of the applicant is constitutional in nature and not connected with service. As such his claim

for disability pension has rightly been rejected by the respondents. He submitted that the instant O.A. 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 'PRIMARY HYPERTENSION' has been opined as NANA by the RMB is that the

disease is constitutional in nature and not connected with service. However, on further scrutiny, we have observed that the applicant's disability was

first detected in February 1997 i.e. after about 10 years of service and prior to that the applicant was not suffering from any ailment. It is known that

stress and strain affects the course of this disease, hence the possibility of stress and strain of military service affecting the course of this disease can't

be ruled out. Hence we are of the opinion that benefit of doubt goes in favour of the applicant. Thus we are of the considered opinion that the

disability 'PRIMARY HYPERTENSION' is to be considered as aggravated by military service in line with the law settled on this matter by the

Hon'ble Apex Court in the case of Dharamvir Singh (supra).

7. We have noted that this disease has originated in February, 1997 and the applicant has been discharged from service w.e.f. 01.01.2007, i.e., after

about 10 years of continuity of this disease. We have also noted that the applicant's RMB was valid for only two years w.e.f. 01.01.2007, however,

we are of the opinion that the disease being of a permanent nature, the RMB of applicant should be deemed as an RMB for life, in light of Hon'ble

Supreme Court Judgment in Civil Appeal No.(s) 5970 of 2019 Commander Rakesh Pande Versus Union of India, decided on 28.11.2019.

8. In view of the above, the Original Application deserves to be allowed, hence, allowed. The impugned order is set aside. The disability of the

applicant 'PRIMARY HYPERTENSION' is to be considered as aggravated by military service for life and his RMB for 02 years is to be deemed as

RMB for life. Applicant is entitled to disability element of pension @ 30% for life which is to be broad banded @ 50% for life in the light of decision

of Hon'ble Supreme Court in Union of India and Ors Vs Ram Avtar & ors (Civil appeal No 418 of 2012 decided on 10th December 2014) case.

However, in view of decision of the Hon'ble Supreme Court in Union of India Vs. Tarsem Singh, reported in 2009 (1) AISU 371 with regard to law of

limitation, the applicant is entitled for the arrears of disability element only upto three years before the date of filing this Original Application. The date

of filing of this Original Application is 04.05.2017. Respondents are directed to give effect to the order within four months from the date of receipt of

copy of this order, failing which it shall attract interest @ 6% per annum till the date of payment.

9. No order as to costs.

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

Pronounced in the open Court on 17th June 2020.