

(20) 06 AFT CK 0036

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 646 Of 2018

Sunil Kumar Istwal

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision: June 17, 0020

Acts Referred:

- Armed Forces Tribunal Act, 2007 - Section 31(1)
- Army Rules, 1954 - Rule 13(iii)(c)

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

Bench: Division Bench

Advocate: Sukhjinder Singh, Shyam Narayan

Final Decision: Dismissed

Judgement

1. Vide our detailed order of even date, we have dismissed the main OA No. 646/2018. Faced with this situation, learned counsel for the applicant

makes an oral prayer for grant of leave for impugning the order of the Tribunal to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed

Forces Tribunal Act, 2007.

After hearing learned counsel for the applicant and going through our order, in our considered view, there appears to be no point of law much less any

point of law of general public importance involved in the order rendered by the Tribunal, therefore, prayer for grant of leave to appeal stands

dismissed.

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

(a) The applicant be granted disability pension consisting of disability element of pension @ 20% to be broad banded and rounded off to 50% of

disability w.e.f. 01.01.2015 since he was discharged out of service on 01.01.2015 under Army Rule 13 (3)(iii)(c) with 12% interest;

(b) Any other relief(s) which this Hon'ble Tribunal may deem appropriate, just and proper in the interest of justice and in the facts and circumstances

of the case may also be granted to the applicant.

2. The brief facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Indian Army on

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in the 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 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-enrolment 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 is to be considered as aggravated by service and he is entitled to get disability pension

@ 20% for life and the same is to be rounded off 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 @ 20% for life, it opined that the disabilities are NANA and not related to military 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 first and second disability in July 2013 and third disability in May 2014. Prima facie it appears that second

and third ID i.e. 'Dyslipidemia' and 13MT2' are related with 'OBESITY'. Dyslipidemia refers to UNHEALTHY LEVELS of one or more kind of

Lipid (FAT) in the blood. OBESITY is known to trigger this disability. Similarly sedentary life style and OBESITY are known to be a risk factor for

developing Diabetes Mellitus Type II. In this background, we have noted that when a soldier is put in 'OBESITY' category, it means that he is 30 or

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) for a considerable time before July 2013 when he was detected with OBESITY.

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 like 'Dyslipidemia' and

'DMT2'. Thus in the above scenario, 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 all the three 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 OA. No. 1656 of 2016.

8. Thus, the applicant has failed to make out a case for himself. Hence, this Original Application is liable to be dismissed, hence, dismissed.

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.