

(20) 06 AFT CK 0042

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 1326 Of 1326, Miscellaneous Application No. 961 Of 2017

Madan Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision: June 19, 0020

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

Bench: Division Bench

Advocate: V.S. Kadian, J.S. Rawat

Final Decision: Dismissed

Judgement

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

(a) Quash and set aside the impugned letter No. PN/7032/DP/12 dated 16.01.2017. And/or

(b) Direct respondents to treat the disability PRIMARY HYPERTENSION of the applicant as attributable to or aggravated by military service and

grant him disability element of pension with benefit of broad banding from 70% (40% + 30%) to 75%. 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. The brief facts, as averred by the learned counsel for both the parties are that the applicant was initially enrolled in the Indian Navy on 28.12.1976

and thereafter got commissioned In the Indian Navy on 01.04.1992 and retired from service on 31.01.2013 in low medical category after rendering

more than 36 years of service. The Release Medical Board (RMB) held at Base Hospital, Delhi Cantt on 10.12.2012 assessed his disabilities (i) C5-6

(CERVICAL SPONDYLOSIS)' @ 20 % for life, (ii) IPIVD L5-S1 (OPTD)' @ 20% for life and (iii) 'PRIMARY HYPERTENSION' @ 30%,

composite @ 60% for life. However, the RMB opined that first and second ID of the applicant was Aggravated by service whereas third ID was

neither attributable to nor aggravated by military service (NANA). The applicant is already in receipt of 50% disability element for his first and second

disabilities. Now he has filed this Original Application for grant of disability element of his third ID i.e. 'Primary Hypertension'.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled/commissioned in the Indian Navy and any

disability not recorded at the time of enrolment/commission 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-commissioning 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 third disability i.e. 'Primary Hypertension' of the applicant is to be

considered as aggravated by service and he is entitled to get disability pension @ 30% for life and all three disabilities to be broad banded to 75% for

life.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that the applicant is already in receipt of 50%

disability element for his first and second ID i.e. (i) IPIVD C5-6 (CERVICAL SPONDYLOSIS)' and (ii) 'PIVD L5-S1 (OPTD)' being Aggravated

by service and his third disability i.e. 'Primary Hypertension', assessed @ 30% for life is NANA; however the net assessment qualifying for disability

pension has been assessed as NIL by the RMB. As such his claim for disability element for his third disability i.e. 'Primary Hypertension' 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 third

disability i.e. 'Primary Hypertension' of the applicant is attributable to or aggravated by military service?

6. We have noted that the applicant that the applicant is already in receipt of 50% disability element duly rounded off for his first and second ID i.e. (i)

'PIVD C5-6 (CERVICAL SPONDYLOSIS)' and (ii) 1PIVD L5-S1 (OPTD)' being Aggravated by service and his third disability i.e. 'Primary

Hypertension' is NANA.

7. The opinion of the same RMB with regard to first and second disease has been accepted selectively by the applicant and for the third disease i.e.

'Primary Hypertension' he is challenging the same. We do not find any valid ground to interfere with the opinion of the RMB with regard to

attributability of the third disease 'Primary Hypertension'. We find that in medical parlance human body needs to be fit on more than one fronts to

remain healthy in totality. Thus if the problems of applicant are related to Spine (disability 1 & 2), the respondents have conceded aggravation due to

stress & strain of military service, however, whether primary hypertension has also been caused due to stress & strain of military service, can best be

decided by the military doctors. Hence, considering all issues, we agree with the opinion of the RMB that third disability of the applicant i.e. 'Primary

Hypertension' is not connected with service hence NANA. Therefore, we are of the opinion that there are no valid grounds for us to give benefit of

doubt to the applicant on this matter and overrule the opinion of Release Medical Board.

8. In view of the above, 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 19th June2020.