

(2020) 03 AFT CK 0073

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 497 Of 2018

Vinod Kumar

APPELLANT

Vs

Union Of India And
Others

RESPONDENT

Date of Decision: March 13, 2020

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

Bench: Division Bench

Advocate: Archana Ramesh, V. Pattabhi Ram

Final Decision: Dismissed

Judgement

1. The applicant, Honorary Captain Vinod Kumar (Retd.), through the medium of the instant Original Application is seeking the following reliefs:

A. Issue directions to the Respondents to quash and set aside the Army Air Defence Records Letter dated 07 Oct 2017 placed as Annexure A-1 and

to declare the Invaliding Disease of 'Coronary Artery Disease either as attributable or aggravated to military service and thereby grant Disability

Pension in the light of the landmark Judgment of the Hon'ble Supreme Court in *Re Dharamvir Singh Vs Union of India* dated 02 July 2013 reported as

92013) 7 SCC 316 which is reflected in the Judgment of the Hon'ble Armed Forces Tribunal in *Re Sub SS Joseph Vs Union of India* in OA No

492/2014 dated 27 April 2015 as also in *Re Sub G Anvazhagan Versus Union of India* in OA No 251/2012 dated 27 April 2015 as also in *Re CHM*

dharamvir Singh Vs Union of India in OA 521/2014 dated 10 August 2015 which would be produced at the time of final hearing to meet the ends of

equity, justice and fair play:

B. Pass such other and further orders/directions to the Respondents in the attendant genuine circumstances of the case, to meet the ends of justice.

2. Briefly stated facts of the case are that the applicant was enrolled in Indian Army on 31.01.1983 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 at

Military Hospital, Agra on 23.11.2012 assessed his disabilities (i) 'CORONARY ARTERY DISEASE (ANTERIOR WALL MYOCARDIAL

INFARCTION), (ii) 'SINGLE VESSEL DISEASE (LAD)' and (iii) 'POST PCI-LAD (BMS)', composite @40% for life but opined the disabilities to

be neither attributable to nor aggravated (NANA) by military service and onset at Peace Station (Mathura). The initial claim of disability element was

rejected by the respondents. The applicant preferred O.A. No. 360/2015 before the Armed Forces Tribunal, which was disposed with the direction to

the respondents to pass a speaking order. In compliance of said order the respondents have passed order dated 07.10.2017 by means of which they

have rejected the claim of the applicant for grant of disability pension. It is in this perspective that the applicant has preferred the present O.A.

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 Indian

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

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant i.e. 'CORONARY ARTERY DISEASE

(ANTERIOR WALL MYOCARDIAL INFARCTION), (ii) 'SINGLE VESSEL DISEASE (LAD)' and (iii) 'POST PCI-LAD (BMS)' have been

regarded as @40 for life by RMB. Since the disabilities were opined by RMB to be neither attributable to nor aggravated by military service his

claim for grant of disability pension has rightly been rejected. He pleaded for dismissal of the O.A.

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. The only question which needs to be answered is straight and simple i.e. whether the disabilities of 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. In view of the settled position of law on attributability we have noticed that the RMB has denied attributability on the ground that the diseases were not connected with service and onset at Peace Station (Mathura). However, we have noticed that in the Release Medical Board the Specialist Doctor, R. Girish, Colonel AMC, Senior Advisor, a Medical Specialist has noted in the risk factor that the applicant was a 'SMOKER'. Since it is established beyond doubt that smoking increases the chances of heart disease and other diseases, hence, cigarette packets have to carry a mandatory warning on its health hazard. Additionally, the medical literature is full of evidence that people who smoke are 2 to 4 times more likely to get heart disease. All the disabilities of the applicant are of heart related. Thus considering the totality of circumstances we are of the opinion that we have no valid reason to interfere with the opinion of medical board declaring his diseases 'CORONARY ARTERY DISEASE (ANTERIOR WALL MYOCARDIAL INFARCTION), (ii) 'SINGLE VESSEL DISEASE (LAD)' and (iii) 'POST PCI-LAD (BMS)' as NANA.

8. In this context we would like to quote the opinion of Hon'ble Supreme Court in Civil Appeal No 1837/2009, tilted Union of India & Another vs. Ex Rfn Ravinder Kumar, the Hon'ble Apex Court vide its order dated 23.05.2012 had stated that:-

Opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension

brushing aside the opinion of the Medical Authorities, record the specific finding to the effect that the disability was neither attributable to
nor aggravated by military service, the court should not ignore such a finding for the reason that Medical Board is specialized authority
composed of expert medical doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability,
due to military service and the conditions of service resulting in disablement of the individual"".

9. Additionally, we would also like to quote the opinion of Hon'ble Supreme Court on the expertise of Medical Board in Civil Appeal No 7672 of 2019

in Ex Cfn Narsingh Yadav vs Union of India & Ors as under :-

21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such

report unless there is strong medical evidence on record w dispute the opinion of the Medical Board which may warrant the constitution of

the Review Medical Board.

10. In view of the above, we are of the opinion that we have no valid reasons to interfere with the opinion of the RMB.

11. Accordingly, the Original Application No. 497 of 2018 is liable to be dismissed and is dismissed.

12. No order as to costs.

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

Pronounced in the open court on 13th March, 2020.