

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

59.

OA 556/2022 WITH MA 3854/2023

WO Joydev Kumar Roy (Retd)	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Mr. A K Chaudhary, Advocate
For Respondents	:	Mr. Harish V Shankar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

O R D E R
11.12.2023

MA 3854/2023

Counter affidavit has been filed. There being some delay in filing the counter affidavit, this application has been filed seeking condonation of delay. Delay condoned. Counter affidavit is taken on record.

2. MA stands disposed of.

OA 556/2022

3. Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application and the reliefs claimed in para 8 read as under:

- (a) Quash and set aside the impugned order dated 12 March, 2021 to the extent this order deny the grant of disability pension to the applicant.
- (b) Direct the respondents to treat the disabilities of the applicant namely, "Primary Hypertension and Prediabetes" as aggravated by military service.

- (c) Direct the respondents to grant disability element of pension to the applicant @40% for life w.e.f. 01.02.2021, as degree of his disablement for because of the said disability has been assessed @40% for life by the RMB..
- (d) Direct the respondents to pay disability element of pension to the applicant at an enhanced rate @of 50% for life w.e.f. 01.02.2021 by rounding off/broad banding applicant's disability from 40% to 50% as per Govt. Policy dated 31.01.2001.
- (e) Direct the respondents to pay to the applicant an interest @10% per annum on the arrears of enhanced disability pension w.e.f. 01.02.2021.
- (f) To pass such further order or orders/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.

2. The applicant was enrolled in the Indian Air Force on 13.09.1983 and discharged from Indian Air Force on 31.01.2021. The applicant submits that for the purpose of Primary Hypertension, the disability has been assessed @ 30% as is evident from the medical records. The composite disabilities for the ailments have been assessed at 40%. Since, the second disability i.e. Prediabetes @ 15% for life does not fulfill the requisite of 20%, it does not warrant any consideration.

3. Keeping in view the consistent stand taken by this Tribunal based on the law laid down by the Hon'ble Supreme Court in the case of *Dharamvir Singh v. Union of India and others* (2013) 7 SCC 316 that Primary Hypertension may arise even in a peace area due to stress and strain of service, we see no reason not to

allow the prayer of the applicant with regard to the disability Primary Hypertension, which has been assessed by the competent Medical Board @ 30%.

4. Accordingly, we allow this application and direct the respondents to grant disability element of pension to the applicant for Primary Hypertension @ 30% for life which be rounded off to 50% for life from the date of retirement i.e., 31.01.2021 in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of *Union of India Vs. Ram Avtar* (Civil Appeal No. 418/2012) decided on 10.12.2014.

5. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order, failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

6. Pending miscellaneous application, if any, stands disposed of.

7. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)