

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

80.

OA 1364/2023 with MA 1202/2024

WO Yogesh Kumar (Retd)	Applicant
Versus		
Union of India & Ors.	Respondents
For Applicant	:	Mr. Manoj Kr Gupta, Advocate
For Respondents	:	Mr. Sudhir Kumar, Advocate

CORAM

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

O R D E R
19.04.2024

MA 1202/2024

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.

MA stands disposed of.

OA 1364/2023

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) To issue/pass an order or direction to set aside/quash the arbitrary order of denial of disability pension to the applicant as contained in Air HQ Impugned letter (Annexure A-1); and/or
- (b) Issue/pass an order or direction to the respondents to grant him 30% disability element

of pension as assessed by the Medical Board along with benefit of rounding off to 50% in terms of Hon'ble Apex Court judgment in ***Ram Avtar vs UoI & Ors***; by treating the onsets as attributable and aggravated to Military service, in terms of judgments i.e., *Annexure A-4* (supra) relied upon **Dharamvir Singh(Supra) and Rajbir Singh (Supra)**, and/or

- (c) To direct the respondents to pay the due arrears of disability pension with interest @ 10% p.a; and/or pass such further order or orders, direction/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with Law.

2. Even though the applicant is found to be suffering from the following two ailments viz, (i) Primary Hypertension (ii) Dyslipidemia and the composite disability for the two ailments have been assessed at 30%.

3. The applicant submits that for the purpose of Primary Hypertension, the disability has been assessed @ 30% as is evident from the medical records. In so far as the second disability viz. Dyslipidemia @ 5%. Since the second disability has been assessed less than 20%, it does not fulfill the twin criteria as per Rule 153 Pension Regulations for IAF, 1961 (Part-I) and hence is not admissible.

4. 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%.

5. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 30% rounded off to 50% with effect from the date of his discharge. All other claims stand rejected.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

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