

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

107.

OA 1563/2019 with MA 2524/2019

Ex Sub Ashok Kumar	Applicant
Versus		
Union of India & Ors.	Respondents
For Applicant	:	Mr. Ved Prakash, Proxy Counsel for Mr. Virender Singh Kadian, Advocate
For Respondents	:	Gp Capt Karan Singh Bhati, Sr. CGSC

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

O R D E R
29.02.2024

OA 1563/2019

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 the applicant has filed this application and the reliefs claimed in para 8 read as under:

- (a) *Quash and set aside the impugned letter No B/38046A/481/2018/AG/PS-4(2nd Appeal) dated 03.05.2019.*
- (b) *To direct the respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant disability element of pension with benefits of broad banding/rounding off the same. And/or*
- (c) *To direct the 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 factual matrix of the case is that the applicant was commissioned into Indian Army on 25.03.1987 and discharged from service on 31.03.2017. The Release Medical Board found the disability, namely, (i) Coronary Artery Disease ICD NO. I-21 @ 30% for life and his medical category was permanently downgraded to P2(P), while his disability was held to be Neither Attributable Nor Aggravated (NANA).

3. The claim of the applicant for the disability element of pension was rejected by the respondents vide their letter No. JC-309564H/Pen(D) dated 17.04.2017. Against the said rejection, the applicant preferred a 1st Appeal dated 27.05.2017 which was rejected by the respondents vide their letter No. B/40502/83/2018/AG/PS-4 (Imp-II) dated 11.07.2018. Thereafter, the applicant submitted 2nd Appeal dated 11.08.2018 which was also rejected by the respondents vide impugned letter No. B/38046A/481/2018/AG/PS-4(2nd Appeal) dated 03.05.2019. Aggrieved by the rejections, the applicant has approached this Tribunal.

4. Placing reliance on the judgement of the Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India and Ors. [2013 (7) SCC 36], learned counsel for applicant argues that after thorough medical examination the applicant was commissioned into military service and there was no

note of any disability recorded in his service records. It is further contended that he served in the Army at various places in different environmental and service conditions in his prolonged service; therefore, any disability occurring during the period of his service is deemed to be attributable to or aggravated by military service.

5. Per contra, learned counsel for the respondents submits that in terms of Para 47 Chap VI GMO 2002, amendment 2008 and vide Regulation 37 of the Pension Regulations for the Army, 2008 Part-I, the onset of the disability of the applicant was during his posting in peace area and also though the same has been assessed @ 30% for life it has been held “neither attributable to nor aggravated” by Military Service by the RMB and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability element of pension due to policy constraints.

6. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the extent of disability was assessed to be above 20% which is the bare minimum for grant of disability element of pension in terms of Regulation 53 (a) of the Pension Regulations for the Army, 2008 (Part-I). The only question that arises for consideration in the above backdrop, is whether disability

suffered by the applicant was attributable to or aggravated by Military Service?

7. The issue of attributability of a disease is no longer *res integra* in view of the verdict of the Hon'ble Apex Court in *Dharamvir Singh* (supra), wherein, it is clearly spelt out that any disease contracted during service is presumed to be attributable to Military Service, if there is no record of any ailment at the time of commission into the Military Service.

8. Regarding broad banding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in *Union of India* Vs. *Ram Avtar*, (Civil Appeal No. 418 of 2012) and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India vide its letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18.04.2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

9. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of a medical disease/disability and the disability must be presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to

have been attributable to or aggravated by military service.

10. Therefore, in view of our analysis, the OA 1563/2019 is allowed and respondents are directed to **grant the benefit of the disability element of pension @ 30% for life** (for Coronary Artery Disease @ 30% for life), **rounded off to 50%** in view of the judgment of the Hon'ble Apex Court in *Union of India Vs. Ram Avtar* (supra) from the date of discharge, i.e., 31.03.2017.

11. The arrears shall be disbursed to the applicant within three months of receipt of the copy of this order failing which they shall earn interest @ 6% p.a. till the actual date of payment.

12. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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