

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

69.

OA 1777/2023 with MA 4391/2023

Ex Hav (MACP Nb Sub) Dileep Kumar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

:

Mr. Raj Kumar, Advocate

For Respondents

:

Mr. K K Tyagi, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE REAR ADMIRAL DHIREN VIG MEMBER (A)

O R D E R
08.02.2024

MA 4391/2023

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.

MA stands disposed of.

OA 1777/2023

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 the Impugned Orders No. B/40502/307/2022/AG/PS-4 (1ST Appeal) dated 03.06.2022 and letter No. 10505160/DP/JR dated 04.02.2022.

- (b) Direct respondents to grant disability element of pension to the applicant duly round off to 50% w.e.f. his date of discharge.
- (c) Direct the respondents to produce Medical Documents before the Hon'ble Court.
- (d) 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.
- (e) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.

2. The applicant submits that for the purpose of Primary Hypertension, the disability has been assessed @ 30% as is evident from the medical records.

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 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.

5. The respondents are directed to grant disability element of pension to the applicant @ 30% for life which be rounded off to 50% for life from the date of retirement 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.

6. 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.

7. Pending MAs, if any, stand closed. There is no order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

Vide our detailed order of even date, we have allowed the main OA No.1777/2023. Faced with this situation, learned counsel for the respondents makes an oral prayer for grant of leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the respondents and going through our order, in our considered view, there appears to be no point of law much less any point of law of general public

importance involved in the order, therefore prayer for grant of leave to appeal stands dismissed.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**

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