

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

70.

OA 186/2023

Capt (TS) P Rajkumar (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Shakti Chand Jaidwal, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC

CORAM

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

ORDER
16.02.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to accept the disabilities of the applicant as attributable to/aggravated by military service and grant disability element of pension @41.15% with effect from the date of retirement of the applicant; along with all consequential benefits. However, at the time of final hearing, the applicant has pressed only for disability (i) Primary Hypertension.

2. The applicant was commissioned in the Indian Navy on 01.07.1989 and superannuated on 30.04.2022. The Release Medical Board held that the applicant was fit to be discharged from service in composite low medical

category S2A2 for the disabilities - (i) Primary Hypertension @ 30% (ii) Migraine @10% for life, and (iii) Obesity @5% with composite disability @ 41.15% for life while the qualifying element for disability pension was recorded as NIL for life on account of disability being treated as neither attributable to nor aggravated by naval service (NANA).

3. Placing reliance on the judgement of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]*, Learned Counsel for applicant argues that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Indian Navy at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by naval service.

4. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Regulation 101 of the Pension Regulations for the Navy, 1964 the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by naval service and is assessed @ 20% or more.

5. Relying on the aforesaid provision, Learned Counsel for respondents further submits that the aforesaid disabilities of the applicant were assessed as “neither attributable to nor aggravated” by military service and not connected with the military service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability 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 opinion that it is not in dispute that the extent of disability (i) was assessed to be above 20% which is the bare minimum for grant of disability pension in terms of 101 of the Pension Regulations for the Navy, 1964.

7. 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%.

8. Accordingly, we allow this application and direct the respondents 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 i.e. **30.04.2022** 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.

9. 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.

10. No order as to costs.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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