

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

140.

OA 2343/2019 WITH MA 3234/2019

Ex Sgt Suraj Bhan Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. I.V. Raghav, Advocate
For Respondents : Sqn Ldr Manish Chandra, Deptt. Reptt.

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

O R D E R
03.10.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and the prayer made in Para 8 read as under:-

- (a) *To grant disability pension to the applicant with all consequential benefits/arrears as per law.*
- (b) *To pass any other appropriate order/directions thereby granting cost of the proceeding and counsel's fee with litigation expenses and further any other relief/s what this Hon'ble Tribunal may deem fit and proper in the circumstances of the matter, in the interest of justice.*

2. Brief facts of the case, the applicant was selected and appointed in the Indian Air Force as an Airman on 29.12.1983. He completed his training as an Airframe Fitter (Group-1) and was posted to the Air Force Technical College, Bangalore, on 28.03.1987, where he worked on

MIG-21 fighter aircraft. The applicant was promoted to the rank of Corporal on 29.12.1988 and worked on MIG-29 fighter aircraft. He was subsequently promoted to the rank of Sergeant on 01.04.1994. During a medical check-up in the year 1998, the applicant was diagnosed with Hypertension and was placed in medical category BEE(T24) on 16.07.1999. His case was later reviewed by the Medical Board and he was placed in a permanent lower medical category, i.e., BEE(P) on 06.02.2003 (Annexure A-3). The applicant claims that he was assessed with @20% permanent disability on 26.02.2003 (Annexure A-3) and that the disability was considered aggravated due to the stress and strain of military service on 13.03.2003 (Annexure A-3).

3. The applicant was discharged from service on 31.12.2003, but no disability pension was granted. He applied for disability pension, which was rejected by the Air Force and the rejection was communicated to him vide letter No. RO/2703/67667/12/03/P&W(DP) on 05.10.2004 stating that the disability was not attributable to Air Force Service. An appeal filed by the applicant was also rejected. The applicant claims in Para 5 that the hypertension diagnosed in 1998 was due to stress and strain of military duties as noted in the medical report (Annexure A-3). He

reiterated these claims in Para 5(d) to (h). However, in grounds (i) and (j) he introduced Circular No. 583 dated 05.09.2017 (Annexure A-4). In Para 7, learned counsel for the applicant references a previous application under Section 14 of the Armed Forces Tribunal Act, 2007, filed as OA No. 412/2010, which was rejected on 07.02.2011. A copy of the said order is filed as Annexure A-8.

4. The respondents, in their detailed counter-affidavit, have contended that the current application is not maintainable; as the applicant's claim for disability pension was dismissed in OA 412/2010 on 07.02.2011, (Annexure R-1).

5. During the hearing, when the Tribunal inquired as to how the present claim is maintainable, given the dismissal of OA 412/2010 on 07.02.2011 by a Coordinate Bench of this Tribunal, the learned counsel for the applicant referred to Circular dated 19.05.2017 (Annexure A-4) and another letter from the Government of India, Ministry of Defence, dated 05.09.2017. He submitted that in view of these circulars, the applicant's disability, which was attributable to and aggravated by military service, entitled him to the benefit as he was prematurely retired prior to 01.01.2006.

Surprisingly, these circulars were not referenced in the factual details of the application, nor were they cited as the basis for the relief sought.

6. A perusal of the order passed in OA 412/2010 on 07.02.2011 by a Coordinate Bench of this Tribunal reveals that all the facts presented by the applicant in this application were already mentioned and considered by the Tribunal during the adjudication of OA 412/2010. The applicant had personally appeared during the proceedings. The primary medical records, reviewed by the Director General Medical Services, indicated that the use of whitener on the documents was improper. Nevertheless, it was concluded that the applicant's disability was neither attributable to nor aggravated by military service. Consequently, the claim for disability pension was dismissed.

7. The findings of the Tribunal in OA 412/2010 clearly indicate that the original medical board proceedings showed corrections using whitener, and it was subsequently concluded that the applicant's hypertension was not attributable to military service. The applicant was discharged after completing 20 years of service, and not on medical grounds. Therefore, his claim for disability pension was rejected.

8. Based on the above, the present application is barred by the principle of *res judicata*. Even in the impugned order dated 02.08.2018 (Annexure A-1), it is stated that the applicant's primary hypertension was classified as neither attributable to nor aggravated by military service, and the disability was assessed between 15% to 19%. In view of Para 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), the applicant did not fulfill the conditions for grant of disability pension.

9. It is surprising that despite the dismissal of his previous application in 2011, the applicant is now seeking relief based on the 2017 circulars, which were not cited as grounds in the present application. It appears that no formal representation or claim based on these circulars has been made by the applicant.

10. In our considered view, the facts and circumstances clearly indicate that the claim of the applicant was previously examined on merit and rejected. There is no indication on record that any claim based on the 2017 circulars has been made and subsequently denied.

11. Before concluding, we note that the circulars dated 19.05.2017 (Annexure A-4) pertain to the grant of disability element to Armed Forces Personnel who were

retained in service despite disability attributable to or aggravated by military service and who subsequently proceeded on premature/voluntary retirement prior to 01.01.2006. As the applicant was discharged after completing 20 years of service and not due to premature or voluntary retirement these circulars are inapplicable to his case.

12. This application is, therefore, wholly misconceived and is accordingly rejected.

13. In light of the foregoing, the OA No. 2343/2019 along with MA 3234/2019 stands dismissed.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

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OA 2343/2019