

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

73.

OA 575/2023 WITH MA 2492/2024

Lt Col Om Hazela (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)

O R D E R
24.09.2024

MA 2492/2024

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.

2. MA stands disposed of.

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3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application with the following prayers:-

(a) Set aside the impugned order dated 31 May 2022 passed by the respondents, rejecting applicant's initial claim for grant of disability pension.

(b) Direct the respondents to conceded disability of the applicant, namely 'Type-2 Diabetes Mellitus' as attributable to aggravated by stress and strain of service.

(c) Direct the respondents to grant disability pension to the applicant @20% for life w.e.f. 25.01.2022, as degree of his disablement due to the said disability has been assessed @20% for life by the RMB.

(d) Direct the respondents to pay disability pension to the applicant at enhanced rate of 50% for life w.e.f. 25.01.2022 by broad-banding his disability from 20% to 50% as per Govt. Policy dated 31.01.2001.

(e) Direct the respondents to pay to the applicant an interest @10% p.a. on arrears of the disability pension w.e.f. 25.01.2022.

4. The applicant was commissioned in the Indian Army on 04.06.2000 (SSC) and took voluntary Premature Retirement from service on 24.01.2022. The applicant submits that for the purpose of disability- Diabetes Mellitus Type-II, has been assessed @ 20% for life as is evident from the medical records.

5. 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 Vs. Union of India and others (2013) 7 SCC 316 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 enrollment into the military Service, we see no reason not to allow the prayer of the applicant with regard to the aforesaid disability.

6. Furthermore, in accordance with the judgment of Hon'ble Supreme Court in Commander Rakesh Pande Vs. UoI

& Ors. [Civil. Appeal No. (s) 5970/2019], we find that the issue pertaining to grant of disability pension for DM-II as well as the question of disabilities of permanent nature to be deemed to have been assessed for life, has been settled.

7. As far as reliance of the respondents on the order dated 11.09.2023 in OA 121/2021, AFT (RB, Chennai) titled Ex Sub M Vijaykannan Vs. UIO & Ors. is concerned, the said issue has been adequately settled by the judgement of the Principal Bench of this Tribunal in OA 2176/2019 Ex JWO Krishan Kumar Tyagi Vs. UIO & Ors. wherein it held that by virtue of the fact that the said judgment did not consider the judgment rendered in Ex. Power Satyaveer Singh [C.A. 7368/2011] as has been upheld by the Hon'ble Supreme Court vide the verdict in UIO & Anr Vs. Rajbir Singh [Civil Appeal 2904/2011; Date of Decision: 13.02.2015] nor the judgement of Hon'ble Supreme Court in Commander Rakesh Pande Vs. UIO & Ors., [Civil Appeal 5970/2019; Date of Decision: 28.11.2019] wherein Hon'ble Supreme Court has upheld the judgement of this Tribunal in Cdr Rakesh Pande Vs. UIO & Ors., [OA 1532/2016 AFT (PB), New Delhi; Date of Decision: 06.02.2019] for grant of disability pension for the disability of Diabetes Mellitus, and therefore,

in our considered view, the decision in *Ex Sub M Vijayakannan Vs. Union of India & Ors* (supra) is limited to the facts of that case, and cannot be held to be a binding precedent.

8. Accordingly, we allow this application and direct the respondents to grant disability element of pension to the applicant @ 20% for life which be rounded off to 50% for life from the date of retirement, i.e. 24.01.2022 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)

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