

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

54.

OA 2322/2021 with MA 2429/2021 & MA 2540/2022

In the matter of :

Ex Sgt Dharmendra Singh ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Ranjan Kumar, Advocate

For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM:

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

O R D E R
25.01.2023

M.A. No. 2540 of 2022 :

Vide this application, the respondents sought for condonation of delay in filing the counter affidavit. In view of the averments made in the application, delay is condoned. Counter affidavit is taken on record. MA stands disposed of.

M.A. No. 2429 of 2021 :

Vide this application, the applicant seeks condonation of delay in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, delay in filing the OA is condoned. MA stands disposed of.

O.A. No. 2322 of 2021 :

The applicant, having been found medically and physically fit, was enrolled in the Indian Army on 15.07.1996 as Weapon Fitter Tradesman. He was discharged from service on 31.07.2016 being in low medical category A4G2 (P) (Permanent). The Release Medical Board (RMB) held on 28.09.2015 assessed the applicant's disability 'Primary Hypertension' @ 30% for life, and held the same as 'neither attributable to nor aggravated by military service' (NANA), based on which, disability pension has been denied to the applicant. Hence, the present Original Application.

2. Learned counsel for the applicant submitted that the respondents have rejected the claim of disability pension in a mechanical manner stating that the RMB held the disability as neither attributable to nor aggravated by military service without assigning any reason for the same. He submitted that the applicant has been posted in field areas/HAA/Ops areas and during the service, he had participated in many operations. He further stated that the nature of the duties performed by the applicant is very stressful and prolonged duty hours as he had to issue/monitoring and maintain the

weapons to various locations, shifting of armament, missiles, loading/offloading of armed and ammunition etc. and due to these hectic and heavy workload and stressful duties performed, he incurred the disability in question. It is further submitted that the disability in question first started in June, 2011, i.e. after about 15 years of service and as the disability 'Primary Hypertension' suffered by the applicant due to stress and strain of service and is attributable to military service, therefore, the applicant is entitled to disability pension.

3. The respondents filed their counter affidavit submitting that the disability of the applicant has been assessed @ 30% for life but the same was held NANA by the RMB. The Competent Authority rejected the disability claim and thus the applicant is not entitled for grant of disability element of the disability pension and the OA deserved to be dismissed.

4. We have heard the learned counsel for the parties and have gone through the records.

5. It is undisputed fact that at the time of joining the service in July, 1996, the applicant was in medically and physically fit condition and the present disability has

admittedly first occurred in June, 2011 i.e. after about 15 years of service and at the time of discharge, he was placed in low medical category.

6. The law on the point of attributability of a disability is already settled by the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India (2013) 7 SCC 316**, which has been followed in subsequent decisions of the Hon'ble Supreme Court and in the number of orders passed by the Tribunal, wherein the Apex Court had considered the question with regard to payment of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the

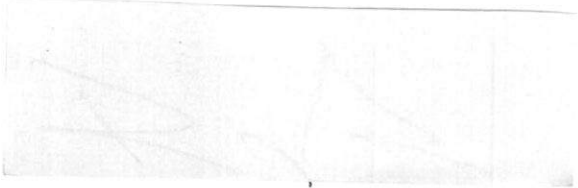
disease from which the incumbent is suffering is neither attributable to nor aggravated by military service.

7. In the light of the law already laid down with regard to the attributability/aggravation, we find that the RMB has denied the attributability/aggravation of the disability on the ground that the onset of disability is in June, 2011 while posted in peace area and, therefore, the applicant is not entitled to disability element of disability pension. However, taking note of the facts and circumstances of the case, we are of the view that this reasoning given by the RMB for denying disability element of disability pension to applicant is very casual, unconvincing and does not give clear picture of the matter. It has already been observed by the Tribunal in large number of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service. It may also be taken into consideration that the most of the personnel of the armed forces have to work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. Admittedly, the applicant was enrolled in July, 1996 and the disability has first started after about 15 years of Army service i.e. in


June, 2011. We are, therefore, of the considered view that the benefit of doubt in these circumstances should be given to the applicant in view of above judgment and settled law on the point of attributability/aggravation, the disability of the applicant is held to be attributable to/aggravated by the military service.

8. In light of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension in respect of disability 'Primary Hypertension'. Therefore, OA is allowed. The respondents are directed to grant disability element of pension for the disability 'Primary Hypertension' to the applicant which be rounded off to 50% for life from the date of discharge in term 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. However, as the applicant has approached the Tribunal after considerable delay, in view of the law laid down in *Tarsem Singh's case (supra)*, arrears will be restricted to three years prior to the date of filing of this OA i.e. 20.09.2021.

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 @ 8% per annum till the date of payment.



[JUSTICE RAJENDRA MENON]
CHAIRPERSON



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

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