

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

46.

OA 1087/2022 with MA 1229/2023 & MA 1472/2022

In the matter of :

MWO (HFO) Shiva Nath Choudhary (Retd) ... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Rohit Pratap & Associates, Advocate

For Respondents : Shri Rajeev Kumar, Advocate

CORAM :

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

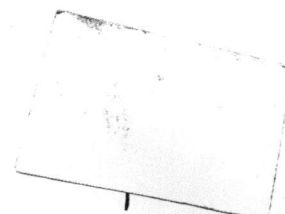
O R D E R
11.05.2023

MA 1472/2022

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in **Union of India and others** Vs. **Tarsem Singh** (2008) 8 SCC 648, the same is allowed condoning the delay in filing the O.A.

MA stands disposed of.

MA 1229/2023



Counter affidavits has been filed. There being delay in filing the same, this application has been filed seeking condonation of delay. Delay is condoned. Counter affidavit is taken on record. MA stands disposed of.

OA 1087/2022

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) To declare the action of respondents as unjust, arbitrary and illegal.
- (b) To direct the respondents for grant of disability element of pension and pay arrears @ 30% with an interest @ 18% per annum from the date of applicant's superannuation from service i.e. 31 Oct 2019.
- (c) To direct the respondents to grant the benefit of rounding off disability of the applicant to 50% from 30% and pay arrears with an interest @ 18% per annum from the date of applicant's superannuation from service i.e. 31 Oct 2019 in terms of letter dated 31 Jan 2001.

- (d) To grant an interest @ 18% on delayed payment of othe disability pension, and
- (e) Any other relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.
- (f) Award cost.

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.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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