

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

D.

OA 168/2022 with MA 239/2022

Ex Hav Raghbir Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

: Mr. Ved Prakash & Devendra Kumar,

Advocate

For Respondents

: Mr. Barkha Babbar, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

ORDER

18.10.2023

Vide separate detailed order passed today. OA stands allowed.

Learned counsel appearing for the respondents makes an oral prayer for grant of leave to appeal for impugning the aforesaid order before the Hon'ble Supreme Court. However, there being no point of law, much less any point of law of general public importance involved in the order, which warrants grant of leave to appeal, the oral prayer is declined.

[RAJENDRA MENON]
CHAIRPERSON

[C. P. MOHANTY]
MEMBER (A)

/sm/

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ORDER

MA 239/2022

Keeping in view the averments made in the application and in light of the decision in **Union of India and others Vs. Tarsem Singh** (2009(1) AISLJ 371), the delay in filing the OA is condoned. MA stands disposed of.

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2. 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

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disabilities of the applicant as attributable to/aggravated by military service and grant disability element of pension @50% rounded off to 75% with effect from the date of discharge of the applicant; along with all consequential benefits.

3. The applicant was enrolled in The Indian Army (Corps of Signal) on 27.08.1980 and was discharged from The Indian Army on 01.09.2006 after serving for 26 years, 5 days of regular service. The Release Medical Board dated 10.04.2006 held that the applicant was fit to be discharged from service in low medical category P2(P) for the disability- (i) CAD TRANSIENT CHB (N) EPICARDIAL CORONARIES (N) CV FUNCTION(I-45) @30% (ii) DIABETES MELLITUS TYPE II 20% (iii) DYSLIPIDEMIA @ 1-5% (iv) PRIMARY HYPOTHYROIDISM @20%, with composite 50% for life and recommended the ID's as neither attributable to nor aggravated (NANA) by military.

4. The claim of the applicant for grant of disability pension was rejected vide letter no. P/142284623/DP-1/NER dated 09.12.2021 stating that the aforesaid claim for grant of disability pension was made after a lapse of 14 years and 9

months and therefore, is time barred in terms Government of India, Ministry of Defence Letter No. 1(3)/2008/D(Pen/Pol) dated 10.05.2016. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

5. 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 Army 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 military service.

6. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Rule 179 of the Pension Regulations for the Indian Army, 1961 (Part-I), 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 Military Service.

7. 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.

8. We have heard the Ld. Counsel for the parties and perused the material available on record.

9. Before proceeding further with the observation, it became pertinent to mention Army Order 16036/ RMB/ IMB/ DGAfMS/ MA (Pens) dated 20.05.2019, dealing with Award Of Entitlement And Assessment Of Hypothyroidism And Obesity, the relevant portion of which is produced as under;

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a) Hypothyroidism:

(i) Attributability and Aggravation:

- *Hypothyroidism may be considered attributable if due to post therapeutic or post diagnostic intervention.*

- *Aggravation may be conceded in all cases of Primary Autoimmune Hypothyroidism.*

(ii) Assessment of Disability Percentage:

- *Subclinical Hypothyroidism not on any treatment - 5%*
- *Subclinical Hypothyroidism on treatment - 10%*
- *Post therapeutic or post diagnostic - 15%*
- *Primary Autoimmune Hypothyroidism - 51%*
- *Hypothyroidism associated with Pericardial or pleural effusion/ Encephalopathy/ Carpal tunnel syndrome likely due to hypothyroidism - 20%*

10. In light of the aforesaid letter the disability of Primary Hypothyroidism can be inferred to be attributable to service and since no cogent reasons were given in the records as to why the said disability is not attributable, the disability, in this particular case in absence of specialised medical opinion can be held as attributable.

11. 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 disabilities was assessed to be 20% which is the bare minimum for grant of disability pension in terms of Rule 179 of the Pension Regulations for the Indian Army, 1961 (Part-I). The

only question that arises in the above backdrop is whether disability suffered by the applicant was attributable to or aggravated by military service.

12. Also, the issue of attributability of disease is no longer *res integra* in view of the verdict of the Hon'ble Apex Court in ***Dharamvir Singh v. Union of India (supra)***, 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 commission into the Military Service.

13. Regarding broadbanding benefits, we find that the ***Hon'ble Supreme Court in its order dated 10.12.2014 in Union of India v. Ram Avtar, Civil Appeal No. 418 of 2012*** and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued

instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

14. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of medical disease/disability, the disability must be presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by air force service.

15. Therefore, in view of our analysis, the OA is allowed and Respondents are directed to *grant benefit of disability element of pension compositely @ 52.8% for life* for (i) CAD TRANSIENT CHB (N) EPICARDIAL CORONARIES (N) CV FUNCTION(I-45) @30% (ii) DIABETES MELLITUS TYPE II 20% (iii) PRIMARY HYPOTHYROIDISM @20%, *rounded off to 75% in view of judgement of Hon'ble Apex Court in Union of India versus Ram Avtar (supra) from the date of filing of this OA.* The arrears shall be disbursed to the applicant within four months

of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

16. Consequently, the O.A. 168/2022 is allowed.
17. No order as to costs.
18. Pending miscellaneous application, if any, stands closed.

Pronounced in the open Court on 18 day of October, 2023.



(RAJENDRA MENON)
CHAIRPERSON


(C.P. MOHANTY)
MEMBER (A)

/ps/