

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1685/2019 WITH MA 2616/2019

Raj Kumari Verma Wd/o (Deceased)
MWO Raj Nandan Prasad Verma (Retd) ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. B.P. Vaishnav, Advocate
For Respondents : Mr. Shyam Narayan, Advocate

CORAM

HON'BLE MR. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

MA 2616/2019

This is an application filed under Section 222) of The Armed Forces Tribunal Act, 2007 seeking condonation of delay of **1278** days in filing the present OA. in view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors Vs. Tarsem Singh 2009(1) AISLJ 371** and in **Ex Sep Chain Singh Vs. Union of India & Ors (Civil Appeal No. 30073/2017)** and the reasons mentioned, the MA 2616/2019 is allowed despite opposition on behalf of the respondents and the delay of **1278** days in filing the OA 1685/2019 is thus condoned. The MA is disposed of accordingly.

OA 1685/2019

2. Invoking Section 14 of The Armed Forces Tribunal Act, 2007, the instant OA has been filed praying for the following prayers :-

(a) To direct the respondents to grant the applicant with the

50% disability from the date of discharge i.e. 01.03.2013.

- (b) To direct the respondents to pay arrears from the date of discharge i.e. 01.03.2013 along with interest @12% per annum till its payment to the applicant.
- (c) Pass any other or such further order of orders as deemed fit to this Hon'ble Tribunal in order to secure the ends of justice in favour of the applicant.

3. The factual matrix of the case is that the applicant was enrolled into Indian Air Force on 07.11.1973 and retired from the Indian Air Force on 28.02.2013 after about 39 years and 114 days of qualifying service. During the Release Medical Board conducted prior to his retirement, he was found to be suffering from the disability, namely ID (i) "CAD(IWMI) (SVD, RCA, Post PCI) (Old)I-21.1Z-09.0 @ 30% for life and his medical category was permanently downgraded to A4G3(P), while his disability was held to be Not Attributable Nor Aggravated (NANA).

4. The initial claim of the applicant for the disability pension was rejected by the Competent Authority vide Letter No. RO/3305/3/Med dated 10.07.2012, and the outcome of the same was communicated to the applicant vide Letter No. RO/2703/614433/02/13/P&W(DP/RMB) dated 19.07.2012. Against the said rejection, the applicant preferred a first appeal dated 20.09.2012, which was rejected vide letter No. AirHQ/99798/5/90/12/MWO/DP/DAV dated 19.07.2013. Subsequently, the applicant preferred a second appeal

dated 15.12.2014, which was again rejected vide letter No. AirHQ/99798/5/2ndAppeal/187/614433/DP/AV-III dated 04.04.2016. Aggrieved by the repeated rejections, the applicant has approached this Tribunal.

CONTENTIONS OF THE PARTIES

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 Air Force 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 153 of the Pension Regulations for the Indian Air Force, 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 Air Force service and is assessed @ 20% or more.

7. Relying on the aforesaid provision, Learned Counsel for respondents further submits that the aforesaid disability of the applicant was assessed as "neither attributable to nor aggravated" by Air Force service and not connected with the Air Force service and as such, his claim was rejected; thus, the applicant is not entitled for

grant of disability pension due to policy constraints.

ANALYSIS

8. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the extent of disability was assessed to be above 20% which is the bare minimum for grant of disability pension in terms of Regulation 153 of the Pension Regulations for the Indian Air Force, 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 Air Force service.

9. The issue of attributability of a 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.

10. Furthermore it cannot be overlooked that the onset of the disability was on 18.10.2007; after enrolment of the applicant on 07.11.1973, i.e., after 34 years of service in the Indian Air Force and in the 10th posting of the applicant. The cumulative stress and strain that the applicant would have undergone during this period of strenuous military service cannot be overlooked, and thus simplicitor reliance on the 14 days of charter of duties dated 24.12.2007, prior to the onset of the disability does not suffice to dislodge the claim of

the applicant, especially as the medical case sheet qua the applicant does not bring forth any contributory factors from the side of the applicant.

11. Regarding broadbanning 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).

12. 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 a medical disease/disability and 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.

CONCLUSION

13. Therefore, in view of our analysis, the OA 1685/2019 is allowed and Respondents are directed to **grant the benefit of the disability element of pension @ 30% for life** (for "CAD (IWMI) (SVD, RCA, Post PCI) (Old)I-21.1Z-09.0 @ 30% for life), **rounded**

off to 50% in view of the judgement of the Hon'ble Apex Court in Union of India versus Ram Avtar (supra) from the date of discharge, i.e., 28.02.2013. However, the arrears shall be restricted to commence to run from three years from prior to the date of filing of this OA which is 04.10.2019. The arrears shall be disbursed to the applicant within three months of receipt of the copy of this order failing which they shall earn interest @ 6% p.a. till the actual date of payment.

14. No order as to costs.

Pronounced in the open Court on 14 day of December, 2023.

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

(JUSTICE ANU MALHOTRA)
MEMBER (J)

Priya Sharma-1