

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

77.

OA 171/2023 WITH MA 3585/2023

Ex Sub Maj(Hony Lt) Ranbir Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. JP Sharma, Advocate
For Respondents : Mr. D K Sabat, Advocate

CORAM :

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

ORDER
01.11.2023

MA 3585/2023

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

2. The MA stands disposed of.

OA 171/2023

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

“(a) To quash and set aside the impugned order dated 13.06.2022 as Annexure A-1 Impugned order.

(b) Direct to the respondents to treat his disability viz “CORONARY ARTERY DISEASE (125)” as Aggravated by military service due to stress and strain of military service as per Re-cat medical board proceeding dated 19.12.2016 and now Hon'ble Supreme law has already been settled in order dated 02.07.2013 in Civil Appeal No. 4949/2013 filed by Dharamvir Singh Vs UOI & Ors and 13.02.2015 in Civil Appeal No 2904/2011 titled as UOI & Ors Vs Rajbir Singh. And/OR

(c) Direct to the respondents to grant Disability Element of Pension @30% wef 01.06.2022 and further benefit of Rounding off @30% to @50% wef 01.06.2022 for life to the applicant as per Para 7.2 of policy issued by GoI, MoD vide letter dated 31.01.2001 and settled the Hon'ble Supreme Court in Civil Appeal No 418/2012 titled UOI & Ors Vs. Ram Avtar vide judgement dated 10.12.2014 alongwith interest @10% p.a. till final payment is made.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."

4. The factual matrix of the case is that the applicant was enrolled into Indian Army on 01.06.1990 and retired from the Indian Army on 31.05.2022 after about 32 years 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) "Coronary Artery Disease (125)" @ 30% for life and his medical category was permanently downgraded to P2(P), while his disability was held to be Not Attributable Nor Aggravated (NANA).

5. The initial claim of the applicant for the disability pension was rejected by BEG Records Roorkee vide letter No. Pen/D-1366/R dated 13.06.2022. Against the said rejection, the applicant preferred a 1st Appeal dated 06.07.2022. Accordingly, BEG Records has processed his 1st Appeal to AG/PS-4(Imp-II) vide letter No. Appeal/3255/D/R/Pen dated 19.07.2022, however, the outcome is still awaited. The applicant also submitted an RTI application dated 08.11.2022 seeking certain medical/other documents and the same were forwarded to him vide BEG Records Roorkee letter

No.23405/0438-22/Gen/RTI dated 05.12.2022. Aggrieved by the rejection and the awaited outcome of the 1st Appeal, the applicant has approached this Tribunal.

CONTENTIONS OF THE PARTIES

6. Placing reliance on the judgement of the Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India and 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.

7. Per contra, learned counsel for the respondents submits that under the provisions of Rule 53 (a) of the Pension Regulations for the Army, 20081 (Part-I), the primary condition for the grant of disability pension is released/retired/discharged on completion of term of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by Military Service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of

disability is assessed at 20% or more.

8. 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 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.

ANALYSIS

9. 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 53 (a) of the Pension Regulations for the Army, 2008 (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?

10. 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 (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.

11. Furthermore it cannot be overlooked that the onset of the disability was on 14.06.2014; after enrolment of the applicant on 01.06.1990, i.e., after 24 years of service in the Indian Army and in the 8th 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, especially as the medical case sheet qua the applicant does not bring forth any contributory factors from the side of the applicant.

12. Regarding broad banding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in Union of India Vs. 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 18.04.2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

13. 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

14. Therefore, in view of our analysis, the OA 171/2023 is allowed and respondents are directed to **grant the benefit of the disability element of pension @ 30% for life** (for "Coronary Artery Disease (125) @ 30% for life), **rounded off to 50% in view of the judgement of the Hon'ble Apex Court in Union of India Vs. Ram Avtar (supra) from the date of discharge, i.e., 31.05.2022.**

15. 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.

16. No order as to costs.

[RAJENDRA MENON]
CHAIRPERSON

[C. P. MOHANTY]
MEMBER (A)

Neha