

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

L.

OA 1875/2022 with MA 2465/2022

Sgt Rajesh Kumar (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

:

Mr. Manoj Kr Gupta, Advocate

For Respondents

:

Mr. Avdhesh Kumar Singh, Advocate

CORAM :

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

ORDER
03.11.2023

Vide our orders of even date, we have allowed the application. Faced with the situation, learned counsel for the respondents makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007 to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[RAJENDRA MENON]
CHAIRPERSON

[C. P. MOHANTY]
MEMBER (A)

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MA 2465/2022

Keeping in view the averments made in the application and in the 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.

2. MA stands disposed of.

OA 1875/2022

3. 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 disabilities

of the applicant as attributable to/aggravated by military service and grant disability element of pension @30% rounded off to 50% with effect from the date of retirement of the applicant; along with all consequential benefits.

4. The applicant was enrolled in the Indian Air Force on 20.06.2001 and retired on 30.06.2021 after serving for more than 20 years of qualifying service. The Release Medical Board dated 29.01.2021 held that the applicant was fit to be discharged from service in composite low medical category A4G2(P) for the disabilities - (i) PRIMARY HYPERTENSION (OLD) @30% for life and (ii) DYSLIPIDEMIA (OLD) @5% for life, with composite disability @ 30% for life while the qualifying element for disability pension was recorded as NIL for life on account of disabilities being treated as neither attributable to nor aggravated by military service (NANA).

5. The claim of the applicant for grant of disability pension was rejected vide letter No. RO/3305/3/Med dated 22.11.2021 and same was communicated to the applicant vide letter no. Air HQ/99798/1/786355/06/21/DAV(DP)/RMB dated 31.12.2021.

Later, the applicant preferred a First Appeal to the respondents dated 09.02.2022 which was not replied within 6 months. Aggrieved by the aforesaid inaction, the applicant has approached this Tribunal.

6. 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 Air Force service.

7. 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.

8. 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 Air Force service and not connected with the Air Force service, while the applicant was a smoker, tobacco-chewer and consumer of alcohol, he was liable for his own acts and his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

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 opinion that it is not in dispute that the extent of first 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). Since, the second disability i.e. Dyslipidemia @ 5% does not fulfill the requisite of 20%, it does not warrant any consideration. Now, the only question that arises in the above backdrop is whether the first disability suffered by the applicant was attributable to or aggravated by military service.

10. An analysis of medical documents with regard to disability - Primary Hypertension, we find that 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 Air Force service, if there is no record of any ailment at the time of enrollment into the Air Force Service.

11. As regards the contention of the respondents that the applicant was a smoker, consumer of alcohol and tobacco chewer, there are no medical documents on record or a medical reasoning which can adequately establish that the disability has arisen in consequence to smoking or drinking, and in absence of the same, it would not be appropriate to presume that just because the applicant has been a smoker or an alcoholic drinker, the disability has arisen.

12. As far as the issue of relation of Primary Hypertension with smoking is dissected, we find that smoking is a known risk factor for cardiovascular disease (CVD), but its relationship to the development of hypertension is unclear. Several

epidemiological studies have shown inconsistent results, having demonstrated inverse and positive associations between smoking and the development of hypertension. The role of smoking in the development of hypertension, however, is not as well elucidated, and smoking cessation is not routinely included as a recommendation for the prevention or treatment of hypertension. Although smoking has been shown to acutely raise blood pressure (BP) levels, its relationship with incident hypertension has been less well defined. Despite the adverse effects of smoking on BP, epidemiological studies have shown inconsistent results.

13. 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 18th April 2016 has issued

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


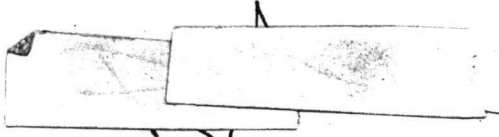
14. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of medical disease/disability, the disability No (i) PHT must be presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, or the applicant being overweight, be presumed to have been attributable to or aggravated by air force service.


15. Therefore, in view of our analysis, the OA is partly allowed and Respondents are directed to grant benefit of disability element of pension PHT @ 30% for life rounded off to 50% in view of judgement of Hon'ble Apex Court in ***Union of India versus Ram Avtar*** (supra) from the date of retirement i.e. 30.06.2021. 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. 1875/2022 is partly allowed.

17. No order as to costs.
18. Pending miscellaneous application, if any, pending stands disposed of.

Pronounced in the open Court on 3 day of November, 2023.



(JUSTICE RAJENDRA MENON)
CHAIRPERSON


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

/akc/ps