

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

85.

OA 2195/2022 with MA 3558/2023

Ex Hav Murali G

Versus

Union of India &Ors.

... Applicant

... Respondents

For Applicant : Mr. O S Punia, Advocate

For Respondents : Mr. Niranjana Das, Advocate

CORAM :

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

ORDER
31.08.2023

MA 3558/2023

Counter affidavit 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 2195/2022

2. 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:

OA 2195/2022 WITH MA 3558/2023
Ex Hav Murali G

A. Set aside the finding of Release Medical Board of applicant whereby it held the disability of the applicant as Neither Attributable Nor Aggravated by service;

B. Set aside the impugned orders regarding rejection of disability element of pension as intimated vide Signals Record letter No P/15691828N/REJECTION/DPI/NER Dt 10.2.2022 & rejection of first appeal vide IHQ of MOD (Army) letter No B/40502/545/2022/AG/PS-4 (1st Appeal) dt. 12.8.2022.;

C. Issue of directions to the respondents thereby directing them to consider the disability of applicant @30% for life as attributable to and aggravated by service and grant of disability element of pension @30% for life;

D. Direct the respondents to give the benefits of rounding off of disability from @30% for life to @50% for life and grant disability element of pension w.e.f. 01.2.2022 @50% for life in the light of law laid down by Hon'ble Supreme Court alongwith interest @12% per annum alongwith all consequential benefits; and.

E. To award any other/further relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.

3. The applicant submits that for the purpose of Primary Hypertension, the disability has been assessed @ 30% as is evident from the medical records.

4. 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%.

5. 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.

6. The respondents are directed to grant disability element of pension to the applicant @ 30% for life which be rounded off to 50% for life from the date of retirement in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012)** decided on 10.12.2014. However, the arrears will be restricted to three years from the date of filing of this OA or the date of applicant's retirement/discharge, whichever is lesser, in keeping with the law laid down in the case of **Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649]**.

7. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order, failing which, the

applicant shall be entitled to interest @ 6% per annum till the date of payment.

8. No order as to costs.

[RAJENDRA MENON]
CHAIRPERSON

[P.M. HARIZ]
MEMBER (A)

In view of the above order, learned counsel for the respondents makes an oral prayer for grant of leave to appeal for impugning the order passed in the application to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

2. After hearing learned counsel for the respondents and going through our order, there appears to be no point of law much less any point of law of general public importance involved in the matter, therefore, oral prayer for grant of leave to appeal stands declined.

[RAJENDRA MENON]
CHAIRPERSON

[P.M. HARIZ]
MEMBER (A)

Priya