

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

43.

OA 830/2022 WITH MA 1081/2022
AND 2567/2023

Ex Hav Bimal Kumar Behera	Applicant
VERSUS		
Union of India and Ors.	Respondents

For Applicant	:	Mr. Ajit Kakkar, Advocate
For Respondents	:	Mr. Sagar Mehlawat, Advocate
		Mr. Harish V. Shankar, Advocate

CORAM :

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

ORDER
24.11.2023

MA 1081/2022

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 41 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of Union of India and Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371] and in Ex Sep Chain Singh Vs. Union of India and Ors. (Civil Appeal No.30073/2017) and the reasons mentioned, MA 1081/2022 is allowed and the delay of 41

days in filing the OA 830/2022 is thus condoned. The MA is disposed of accordingly.

MA 2567/2023

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

OA 830/2022

3. 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:

- (a) To direct the respondents to bring all service and medical records of the applicant including RMB.
- (b) To set aside the rejection letters dated 06.04.2021, 21.02.2022 and respondent's reply dated 24.02.2022.
- (c) To granty disability pension to the applicant from the date of discharge w.e.f. 01.10.2020.
- (d) To direct the respondents to grant broad banding of the disability pension w.e.f. 01.10.2020.
- (e) To direct the respondents to issue a corrigendum PPO pertaining to the disability

pension and broad banding of the disability pension of the applicant.

- (f) To direct the respondents to pay arrears of disability pension and broad banded disability pension along with interest @ 12% w.e.f. 01.10.2020.
- (g) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.

4. The applicant was enrolled in the Indian Army on 22.09.2004 and discharged from Service on 30.09.2020. The applicant submits that for the purpose of Diabetes Mellitus Type 2, the disability has been assessed @ 20% as is evident from the medical records. The composite disability for the ailment has been assessed at 20%.

5. 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 Diabetes Mellitus Type 2 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 Diabetes Mellitus Type 2, which has been assessed by the competent Medical Board @ 20%.

6. Accordingly, we allow this application and direct the respondents to grant disability element of pension to the

applicant @ 20% for life which be rounded off to 50% for life from the date of retirement i.e., 30.09.2020 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.

9. Pending miscellaneous application(s), if any, stands disposed of.

[RAJENDRA MENON]
CHAIRPERSON

[P. M. HARIZ]
MEMBER (A)

/vks/