

**COURT NO. 2**  
**ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH: NEW DELHI**

**OA 931/2019 with MA 1582/2019**

**Ex WO Jaiparkash Sheorain**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Mr. Ved Prakash, Advocate**  
**For Respondents : Mr. A K Gautam, Sr. CGSC**

**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

**MA 1582/2019**

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of **1061** 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 1582/2019 is allowed and the delay of **1061** days in filing the OA 931/2019 is thus condoned. The MA is disposed of accordingly.

2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

*“(a) Quash impugned letter No Air HQ/99798/1/691430/DAV/DP/CC dated 14.05.2019 and Air HQ/99798/1/691430/12/15/DP/DAV dated 14.07.2015*

*(b) Direct the respondents to grant disability element of pension to the applicant duly rounded off to 50% w.e.f his date of discharge.*

*(c) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a from the date of retirement with all the consequential benefits.*

*(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.”*

### **BRIEF FACTS**

3. The applicant was enrolled in the Indian Air Force on 24.12.1983 and discharged from the Indian Air Force service on 31.12.2015 under the clause “on fulfilling the conditions of enrolment” after rendering total 32 years and 08 days of regular service. The Release Medical Board dated 18.05.2015 held that the applicant was fit to be discharged from service in low medical category A4G4 (P) for the disabilities of (i) Obesity (Old) @ 1-5% for life and (ii) NAFLD (Old) @11-15% for life compositely assessed @ 20% for life while the qualifying element for disability was

recorded as NIL for life on account of the disability being treated as neither attributable to nor aggravated by military service.

4. On adjudication, the AOC AFRO has upheld the recommendations of the RMB and rejected the disability pension claim vide letter no. RO/3305/3/Med dated 12.06.2015. The outcome was communicated to the applicant vide letter no Air HQ 99798/1/691430/12/15/DP/DAV dated 14.07.2015 with an advice that the applicant may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. The applicant served legal notice/representation dated 24.05.2019 which was replied to by the respondents vide letter no Air HQ/99798/1/691430/DAV/DP/CC dated 14.05.2019. Aggrieved by the response of the respondents, the applicant has approached this Tribunal. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT, Act 2007.

### ***CONTENTIONS OF THE PARTIES***

5. Placing reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors* [2013 (7) SCC 36], the learned counsel for the applicant submitted 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

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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. The learned counsel for the applicant also placed reliance on the verdicts of the Hon'ble Supreme Court as under:-

- Civil Appeal No 5605/2010 titled *Sukhvinder Singh vs UOI* decided on 25.06.2014,
- Civil Appeal No. 11208/2011 titled as *Union of India & Ors. vs. Angad Singh Titaria* dated 24.02.2015,
- Civil Appeal No. 2904/2011 titled *UOI vs. Rajbir* dated 13.02.2015 and
- Civil Appeal No. 418/2012 titled *UOI vs Ram Avtar* dated 10.12.2014,

7. The learned counsel for the applicant also placed reliance on the order of the AFT, Regional Bench, Kochi in OA 13/2013 titled *T. Sreekumar Nair v. UOI* wherein similarly situated personnel was given relief.

8. The learned counsel for the applicant also placed reliance on Para 22(e), Chapter VII of the Guide to Medical Officers (Military Pensions) 2008 to contend to the effect that the disability of NAFLD (Non Alcoholic

Fatty Liver Disease) which the applicant suffers from cannot be assessed at less than 20%.

9. Per contra, the 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. In other words, disability pension is granted to those who fulfill the following two criteria simultaneously:-

(i) Disability must be either attributable to or aggravated by service.

(ii) Degree of disablement should be assessed at 20% or more.

The learned counsel further submits that the RMB has assessed the applicant's disability as neither attributable to nor aggravated by service which does not fulfill the criteria (i) as above and hence the applicant is not entitled for the grant of disability pension in accordance with prevailing rules and policies.

#### *ANALYSIS*

10. As per Rule 153 of the Pension Regulations for the Indian Air Force, 1961(Part-1), it is stated to the effect:-

*53. Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by air force service and is assessed at 20 per cent or over.*

On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that the applicant has suffered from two disabilities viz. (i) Obesity (Old) @ 1-5% for life, and (ii) NAFLD (Old) @ 11-15% for life compositely assessed @20% for life. In so far as the disability of Obesity (Old) is concerned, the said disability is assessed @1-5% which is below 20% and does not fulfill the twin criteria as per Rule 153 Pension Regulations for IAF, 1961 (Part-I) and hence is not admissible.

11. In so far as the disability of the applicant i.e. NAFLD is concerned, it has been assessed @ 11-15% by the Release Medical Board and also assessed as 'NANA'. The learned counsel for the applicant however submitted that the said disability cannot be assessed less than 20% as per Para 22(e), Chapter VII of the Guild to Medical Officers (Military Pensions) 2008, it is pertinent to mention that the Liver disease for which it cannot be assessed at less than 20% is because of the disability being caused by the Hepatitis as per the said GMO. In so far as Hepatitis is concerned, the article accessed through the website of National Institutes of Health (<https://medlineplus.gov/hepatitis.html>) titled "Hepatitis" was examined by us and which reads to the effect:-

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***“What is hepatitis?”***

*Hepatitis is inflammation of the liver. Inflammation is swelling that happens when tissues of the body are injured or infected. It can damage your liver. This swelling and damage can affect how well your liver functions.*

*Hepatitis can be an acute (short-term) infection or a chronic (long-term) infection. Some types of hepatitis cause only acute infections. Other types can cause both acute and chronic infections.*

***What causes hepatitis?***

*There are different types of hepatitis, with different causes:*

- *Viral hepatitis is the most common type. It is caused by one of several viruses -- hepatitis viruses A, B, C, D, and E. In the United States, A, B, and C are the most common.*
- *Alcoholic hepatitis is caused by heavy alcohol use*
- *Toxic hepatitis can be caused by certain poisons, chemicals, medicines, or supplements*
- *Autoimmune hepatitis is a chronic type in which your body's immune system attacks your liver. The cause is not known, but genetics and your environment may play a role.”*

It is therefore clear from the RMB that the applicant did not suffer from any infection of virus but his condition is due to the accumulation of fat in the liver and the medical literature in relation to the disability of NAFLD as accessed through the website of National Institutes of Health (<https://medlineplus.gov/ency/article/007657.htm>) reads to the effect:-

***“Nonalcoholic fatty liver disease***

*Nonalcoholic fatty liver disease (NAFLD) is the buildup of fat in the liver that is NOT caused by drinking too much alcohol. People who have it do not have a history of heavy drinking. NAFLD is usually but not always related to being overweight.*

*For many people, NAFLD causes no symptoms or problems. A more severe form of the disease is called non-alcoholic steatohepatitis (NASH). NASH can cause cirrhosis and liver failure. It can also cause liver cancer.*

*Causes*

*NAFLD is the result of more than normal deposits of fat in the liver. Things that may put you at risk include any of the following:*

- *Being overweight or obese. The more overweight you are, the higher the risk.*
- *Prediabetes (insulin resistance).*
- *Type 2 diabetes.*
- *High cholesterol.*
- *High triglycerides.*
- *High blood pressure.*

*Other risk factors may include:*

- *Rapid weight loss and poor diet*
- *Gastric bypass surgery*
- *Bowel disease*
- *Certain medicines, such as calcium channel blockers and some cancer drugs*

*NAFLD also occurs in people who have no known risk factors."*

From the above, it is clear that the disability of NAFLD @11-15% as assessed by the RMB is not attributable to any infection from the virus (Hepatitis) as claimed by the applicant. Also, vide para 3, Part II of the RMB dated 18.03.2015, it is also clear that the applicant was overweight by 21 KGs and his BMI was 29.01 kg/m<sup>2</sup> even at the time of his RMB and the correlation between the disability of NALFD and the applicant's being overweight and accumulation of fat in the liver cannot be overlooked.




## CONCLUSION

12. In view of the aforesaid contentions and the parameters referred to above, and the fact that the applicant's disability of NAFLD having been not caused by any infection of virus and in view of the correlation of the said disability and his being overweight, we are of the view that the applicant is not entitled to the grant of disability element of pension for the disability of NAFLD. Therefore, we hold that there is no merit in the contentions of the applicant and hence, can give no relief to the applicant. Thus, the OA 931/2019 is dismissed.

13. No order as to costs.

Pronounced in the open Court on 21<sup>st</sup> day of September, 2023.

  
[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

  
[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/sp/