

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

**OA 963/2022 WITH MA 1276/2022**

Lt Col Dhanlaxmi Reddy (Retd) ... Applicant  
 Versus  
 Union of India and Ors. ... Respondents

For Applicant : Shri. Ajit Kakkar, Advocate  
 For Respondents : Shri Arvind Patel, Advocate

**CORAM**

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

**ORDER**

**MA 1276/2022**

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 963/2022**

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant

**OA 963/2022**  
**Lt Col Dhanlaxmi Reddy (Retd) Vs UoI & Ors.**

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 @20% rounded off to 50% with effect from the date of discharge of the applicant; along with all consequential benefits.

4. The applicant was enrolled in The Indian Army on 31.12.1974 and retired from the Indian Army on 31.12.2001 after serving for more than 27 years of qualifying service. The Release Medical Board dated held that the applicant was fit to be discharged from service in low medical category S1H1A1P2(P)E1 for the disabilities "HBS AG Positive Carrier ICD V-70" @NIL recorded as attributable to service and (ii) "Low Back Ache (ICD No. 724E @20% for life recorded as aggravated by service, while the qualifying element for disability pension was recorded as 20% for life on account of disabilities (i) and (ii) being treated as attributable and aggravated respectively by military service (NANA).

5. However, the claim of the applicant for grant of disability pension was rejected vide letter no. NR

**OA 963/2022**  
**Lt Col Dhanlaxmi Reddy (Retd) Vs UoI &Ors.**

15815Y/MNS/MPRS(0)/02/2021/AG/MP(ORO) dated 25.01.2022 stating that the aforesaid disabilities were considered and rejected as per Rule 50 CCS (Pension Regulations of the Army, as the officer retired prematurely i.e. on own request on premature retirement. 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 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 while not disputing the attributability and aggravation of Disabilities (i) and (ii) respectively due to military service submits that as per Rule 50 CCS of the Pension Regulations for the Indian Army, 1961 (Part-I), the officers retiring prematurely i.e on their own request on

premature retirement are not entitled for any disability pension.

8. Relying on the aforesaid provision and Para 48 of Pension Regulations for Army 1961 (Part I), Learned Counsel for respondents submits that the disability pension may be granted to an officer who is invalidated out of service and since the applicant was not invalidated but discharged from service and as such her claim was rejected.

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 disability was assessed to be above 20% which is the bare minimum for grant of disability pension in terms of Regulation 81 of the Pension Regulations for the Indian Army, 2008 (Part-I). The disability of HBS AG+ve @ NIL% has been recorded as NIL but attributable to service whereas Disability of Low Back Ache @20% for life has been recorded as Aggravated by Military Service. Thus, only question that arises is whether the applicant is entitled to Disability Pension when he/she has been discharged on own request after

rendering the qualifying service.

10. 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 military service, if there is no record of any ailment at the time of commission into the Military Service.

11. The issue of grant of Disability Pension including Disability element to retirees on own request post 01<sup>st</sup> January 2006 has been clearly spelt out in MoD letter No 16(5)/2008/D(Pen/Policy) dated 29 September 2009. Later the same provision was extended to voluntary retirees prior to 01<sup>st</sup> January 2006 vide MoD Letter dated 19 May 2017 based on Judgment of Armed Forces Tribunal (Principal Bench) New Delhi in the case of Major (Retired) Rajesh Kumar Bhardwaj OA No 336 of 2011, order dated 07 February 2012.

12. In light of the above provisions, and the policy letters of MoD as quoted above, rejection of the claim of Disability Pension in

OA 963/2022  
Lt Col Dhanlaxmi Reddy (Retd) Vs UoI & Ors.

case of the applicant is no longer legally tenable.

13. Regarding broadbanding benefits, we find that the ***Hon'ble Supreme Court in its order dated 10.12.2014 in Union of India v. 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 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 Army service.

15. Therefore, in view of our analysis, the OA is partly

OA 963/2022  
***Lt Col Dhanlaxmi Reddy (Retd) Vs UoI &Ors.***

allowed and Respondents are directed to ***grant benefit of disability element of pension @ 20% for life*** (for Low Back Ache @20% for life), ***rounded off to 50% in view of judgement of Hon'ble Apex Court in Union of India versus Ram Avtar (supra)***. However, the arrears shall be restricted to 3 years prior to filing of this OA which is 27.04.2022. 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 OA 963/2022 is partly allowed.
17. No order as to costs.
18. Miscellaneous application, if any, pending stands closed.

Pronounced in the open Court on  28 day of August, 2023.

**[RAJENDRA MENON]**  
**CHAIRPERSON**

**[C P MOHANTY]**  
**MEMBER (A)**

/ps/