

**OA 1050/2022 with MA 1414/2022 & MA 3684/2022**

**MWO Chitranjan Singh (Retd) ... Applicant**

**Union of India & Ors. ... Respondents**

**For Respondents :** Shri R.S. Chhillar, Advocate

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**  
**07.02.2023**

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.

Vide this application, the applicant seeks condonation of delay of 3725 days in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of ***Deokinandan***

**Prasad Vs. State of Bihar [AIR 1971 SC 1409]** and in **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**,

delay in filing the OA is condoned. MA stands disposed of.

**O.A. No. 1050 of 2022 :**

The applicant, having been found medically and physically fit, was enrolled in the Indian Air Force on 18.11.1974. He was discharged from service on 29.02.2012 in low Medical Category A4G3(P). The Release Medical Board (RMB) held in March, 2011 assessed the applicant's disabilities '(i) PRIMARY HYPERTENSION @ 30% and (ii) Diabetes Mellitus (Old) @ 15-19% with composite degree of disablement @ 40% and held the same as 'neither attributable to nor aggravated by military service' (NANA), based on which, disability pension has been denied to the applicant. Hence, the present Original Application.

2. Even though the applicant is found to be suffering from the aforesaid two ailments viz.(i) Primary Hypertension and (ii) Diabetes Mellitus and the composite disability for the two ailments has been assessed at 40%, during the course of

hearing today, learned counsel for the applicant made a fair statement that for the present in this application, the applicant would only be praying for disability pension pertaining to one ailment i.e. Primary Hypertension and he does not press for his claim for the other ailment. The applicant submits that for the purpose of Primary Hypertension, the disability has been assessed @ 30% as is evident from the medical records.

3. The consistent stand taken by this Tribunal is based on the law laid down by the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India and others [(2013) 7 SCC 316]**, which has been followed in subsequent decisions of the Hon'ble Supreme Court and in the number of orders passed by the Tribunal, wherein the Apex Court had considered the question with regard to payment of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance

and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service. Relevant paras are reproduced hereunder :

***"28. A conjoint reading of various provisions, reproduced above, makes it clear that:***

***(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).***

***(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].***

***(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).***

***(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].***

*(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].*

*(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and*

*(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 - "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above."*

4. It has already been observed by the Tribunal in large number of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service and that such a discrimination between postings in peace area or field/HAA/CI Ops areas to say that there is not stress and strain of service should not be there for the purpose of granting disability pension. It may also be taken into consideration that the most of the personnel of the armed forces, during their service, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. Admittedly, the applicant was enrolled in November, 1974 and the disability has first started after more

than 29 years of the service i.e. in August, 2004. There has not been any note in this regard in his medical records. We are, therefore, of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of above judgment and settled law on the point of attributability/aggravation, the disability of the applicant should be held attributable to/aggravated by the military service.

5. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension in respect of disability 'Primary Hypertension'. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension with regard to Primary Hypertension which be rounded off to 50% for life with effect from the date of his discharge 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, as the applicant has approached the Tribunal after a considerable delay, in view of the law laid down in *Tarsem Singh's case (supra)*, arrears will

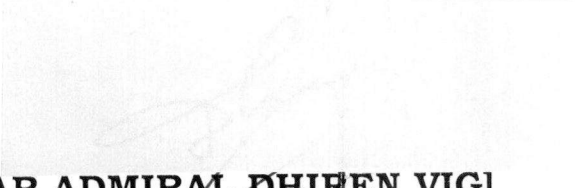
be restricted to three years prior to the date of filing of this OA  
i.e. 11.05.2022.

6. The respondents are thus directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, *failing which*, the applicant will be entitled for interest @ 6% p.a. from the date of receipt of copy of the order by the respondents.

7. In view of the above, pending MA(s), if any, stands closed.  
There is no order as to costs.



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



**[REAR ADMIRAL DHIREN VIG]**  
**MEMBER (A)**

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