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

C..

OA 1168/2018 with MA 2068/2019

Lt Cdr M Balakrishnan (Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. S C Jaidwal, Advocate
For Respondents : Mr. Arvind Patel, Advocate

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

ORDER
19.12.2023

Vide our detailed order of even date, we have allowed the main OA No. 1168/2018. Faced with this situation, learned counsel for the respondent makes an oral prayer for grant of leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the respondent and going through our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order, therefore prayer for grant of leave to appeal stands dismissed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT. GEN. P.M. HARIZ]
MEMBER (A)

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

O.A. No. 1168 of 2018
with
M.A. No. 2068 of 2019

In the matter of :

Lt Cdr M. Balakrishnan (Retd.) ... **Applicant**

Versus

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

For Applicant : Shri Shakti Chand Jaidwal, Advocate

For Respondents : Shri Arvind Patel, Advocate

CORAM :

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

O R D E R

M.A. No. 2068 of 2019 :

Vide this application, the respondents seek condonation of delay in filing the counter affidavit. In view of the averments made in the application, delay is condoned. Counter affidavit is taken on record. MA stands disposed of.

O.A. No. 1168 of 2018 :

The applicant, having been found medically and physically fit, was enrolled in the Indian Navy on 17.08.1964. He took premature retirement on 31.05.1995. The Release Medical Board (RMB) held in April, 1995 assessed the

applicant's disability 'ESSENTIAL HYPERTENSION' @ 40% for two years and accepted the same as 'aggravated by Naval Service'. However, the disability pension was denied to the applicant.

2. The initial claim of the applicant for grant of disability pension was rejected as the applicant retired prematurely in May, 1995 as per rules in vogue. However, vide MoD letter dated 19.05.2017 (Annexure A-10), the armed forces personnel retired prematurely prior to 01.01.2006 became entitled to the disability/war injury pension, provided their disability was accepted as attributable to/aggravated by service and they are still suffering from the same disease, with effect from 01.01.2006. It is the case of the applicant that various appeals/applications along with requisite documents were submitted by him claiming the relief but all went in vain. Finally, the applicant preferred an appeal dated 17.10.2017 for grant of disability pension which was sent along with all earlier correspondences. However, since no reply was received, the applicant filed the present OA.

3. During the pendency of the matter, the respondents conducted the Reassessment/Review Medical Board (RAMB)

of the applicant in January, 2019, wherein the disability of the applicant 'Essential Hypertension' was re-assessed @ 30% with net assessment of 30% (Permanent) for duration of assessment being 01.06.1995 to 08.01.2019 and it has been reported that the applicant would have to be on lifelong medication for the disability, condition of which is reported to be unchanged since its onset.

4. It is an admitted fact by the respondents that the RMB held in 1995 has already accepted the disability as 'Aggravated by Naval Service'. Further, the Tribunal has taken a consistent view that the disability of hypertension is considered attributable to/aggravated by military service conditions in view of 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 to be 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."

5. It has already been observed by the Tribunal in a catena of cases that peace stations in military services have their own pressure of rigorous military training and associated stress and strain of the service. 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. Moreover, the disease

Hypertension is listed in the schedule of the Entitlement Rules, 1982 (Annexure III to Appendix II) as the diseases affected by stress and strain. The Coordinate Bench of this Tribunal in the case of ***Col R.R. Panigrahi Vs. Union of India & Ors. [O.A. No. 1825 of 2018]*** decided on 01.08.2019 allowed the OA grating disability pension for hypertension on the similar grounds. Further, the RAMB has assessed the disability @ 30% (Permanent), hence, in view of the observations made in the judgment of Hon'ble Supreme Court in the case of ***Commander Rakesh Pande Vs. Union of India & Ors. [Civil Appeal No. 5970 of 2019]*** decided on 28.11.2019, wherein the Hon'ble Apex Court while upholding the decision of the Armed Forces Tribunal granting disability pension for five years to the applicant, granted the disability for life, the disability assessed by the RAMB is to be considered as 'for life'. Relevant para of the aforesaid judgement is reproduced as under :

> ***"Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual himself requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled***

to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @ 50% for life.

[Emphasis supplied]

6. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension for the disability 'Essential Hypertension'. Accordingly, we allow this application holding that the applicant is entitled to disability element of disability pension with regard to Essential Hypertension @ 30% for life w.e.f. 01.01.2006, which be rounded off to 50% for life 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, 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. 03.07.2018.

7. 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.

8. In view of the above, pending MAs, if any, stand closed. There is no order as to costs.

Pronounced in open Court on this 19th of December, 2023.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P.M. HARIZ]
MEMBER (A)

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