

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
OA 1243/2021 WITH MA 1106/2021

Ex L LOG (SC) Mahendra Singh	...	Applicant
Versus		
Union of India and Ors.	...	Respondents
For Applicant	:	Mr. Ved Prakash, Advocate
For Respondents	:	Mr. Anil Guatam, Advocate

CORAM

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

ORDER

MA 1106/2021

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 1243/2021

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant 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 retirement of the applicant; along with all consequential benefits.

4. The applicant was enrolled in the Indian Navy on 08.04.2005 and retired on 30.04.2020 after serving for 15 years and 23 days of qualifying service. The Release Medical Board dated 01.01.2020 held that the applicant was fit to be discharged from service in composite low medical category S3A2(P) for the disabilities - (i) DIABETES MELLITUS Type II (Old) @ 20% for life, (ii) CHRONIC OTITIS MEDIA (LEFT) @ 5% for life, with composite disability of @ 24% rounded off to 20% for life while the qualifying element for disability pension was recorded as NIL for life on account of (i) disability being treated as neither attributable to nor aggravated by military service (NANA). While the second disability as attributable to service.

5. The claim of the applicant for grant of disability pension was rejected vide letter no.

PEN/600/D/LRDO/I:04/2020/156944T dated 21.04.2020

OA 1243/2021

Ex L LOG (SC) Mahendra Singh Vs Uol & Ors.

stating that the aforesaid (ii) disability was considered as neither attributable to nor aggravated by military service. While the second disability as attributable to service. The first appeal was preferred by the applicant on 10.12.2020. Aggrieved by the aforesaid rejection, 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 Navy 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 submits that under the provisions of Rule 4 of Entitlement Rules for Casualty Pensionary Awards, 1982, 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 Naval service and is assessed @ 20% or more.

8. Relying on the aforesaid provision, Learned Counsel for respondents further submits that the aforesaid disabilities of the applicant were assessed as "neither attributable to nor aggravated" by Navy service and not connected with the Naval service.

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 first and second disability was compositely assessed to be 24% which is the bare minimum for grant of disability pension in terms of 4 of Entitlement Rules for Casualty Pensionary Awards, 1982. Since, the second disability does not fulfill the requisite of 20%, it does not warrant any consideration.

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 Naval, if there is no record of any ailment at the time of commission into the Air Force Service. As regards the contention of the respondents that the applicant was overweight, a scrutiny of weight chart reveals that at the time of onset of the disabilities, applicant was within the permissible weight limit.

11. Furthermore, the issue regarding the attributability of Diabetes Mellitus has been settled by the ***Hon'ble Supreme Court in Commander Rakesh Pande v. Union of India (Civil Appeal No. 5970 of 2019)*** wherein the Apex Court has not only held that the Diabetes Mellitus is a disease which is of permanent nature and will entitle the applicant to disability pension, but also observed that in case where the disability is of permanent nature, the disability assessed by the Medical Board shall be treated for life and cannot be restricted for specific period.

12. Regarding broadbanning 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 18.04.2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

13. 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, or the applicant being overweight, be presumed to have been attributable to or aggravated by Naval service.

14. Therefore, in view of our analysis, the OA is partly allowed and Respondents are directed to **grant benefit of disability element of pension compositely @ 20% for life** (for DIABETES MELLITUS Type II @ 20%, for life), **rounded off to 50%** in view of judgement of Hon'ble Apex

Court in ***Union of India versus Ram Avtar*** (supra) from the date of discharge i.e. 30.04.2020. 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.

15. Consequently, the O.A. 1243/2021 is partly allowed.

16. No order as to costs.

17. Miscellaneous applications, if any, pending stand closed.

Pronounced in the open Court on ^{HA} 4 day of September, 2023.

(RAJENDRA MENON)
CHAIRPERSON

(C.P. MOHANTY)
MEMBER (A)

/ps/