

COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

B..

OA 1263/2019

Ex Dfr Manmohan Singh

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate

For Respondents : Mr. V Pattabhi Ram, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER  
08.12.2023

Vide our detailed order of even date, we have allowed the OA 1263/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of 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 to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

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(JUSTICE ANU MALHOTRA)  
MEMBER (J)

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(LT GEN C.P. MOHANTY)  
MEMBER (A)

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**HON'BLE LT GEN C.P.MOHANTY, MEMBER (A)**

**ORDER**

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 @30% rounded of to 50% with effect from the date of discharge of the applicant i.e. 30.09.2018 along with all consequential benefits.

2. The applicant was enrolled in The Indian Army on 30.09.2000 and retired from The Indian Army on 30.09.2018 after serving for 18 years and 01 day of

qualifying service. The Release Medical Board dated 11.07.2018 held that the applicant was fit to be discharged from service in low medical category S1H1A1P2(P)E1 for the disability - PRIMARY HYPERTENSION (I 10) @30% for while the qualifying element for disability pension was recorded as NIL for life on account of disabilities being treated as neither attributable to nor aggravated by military service (NANA).

3. The claim of the applicant for grant of disability pension was rejected vide letter No 15481191X/DP/Pen dated 01.10.2018 stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service. The applicant submitted his first Appeal cum Legal Notice vide letter No VSK/23/02/2019 dated 01.02.2019 against rejection of his Disability Element which was rejected by IHQ of MoD (Army) vide letter No B/40502/319/2019/AG/PS-4 (Imp-II) dated 06.06.2019. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

4. 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 Indian 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.

5. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Para 81(a) of Pension Regulation for the Army, 2008 (Part-1), 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 military service and is assessed @ 20% or more.

6. 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 military service and not connected with the military service and as such, his claim was rejected; thus, the

applicant is not entitled for grant of disability pension due to policy constraints.

7. 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 under the provisions of Para 81(a) of Pension Regulation for the Army, 2008 (Part-1). The only question that arises in the above backdrop is whether disability suffered by the applicant was attributable to or aggravated by military service.

8. 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.

9. 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).

10. 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 military service.

11. Therefore, in view of our analysis, the OA 1263/2019 is allowed and Respondents are directed to ***grant the benefit of the disability element of pension @ 30% for life*** (for the disability of PRIMARY HYPERTENSION @30%), ***rounded off to 50% in view of the judgment of the***

***Hon'ble Apex Court in Union of India versus Ram Avtar (supra)***. from the date of discharge from service. The arrears shall be disbursed to the applicant within three months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

12. No order as to costs.

Pronounced in the open Court on 8 day of December, 2023.

(LT GEN C.P MOHANTY)  
MEMBER (A)

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

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