

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

OA 1292/2022

**Hav Kamal (Retd)
Versus
Union of India and Ors.**

**... Applicant
... Respondents**

**For Applicant : Mr. Manoj Kumar Gupta, Advocate
For Respondents : Mr. K.K. Tyagi, Advocate**

CORAM

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

ORDER

Invoking Section 14 of Armed Forces Tribunal Act, 2007, the instant OA has been filed praying for following prayers :-

- (a) To direct the Respondents to grant the applicant with the 75% disability from the date of discharge.***
- (b) Issue/pass an order or direction to the respondents to round off the disability pension from 50% for life to 75% for life.***
- (c) To direct the Respondents to pay arrears from the date of discharge to the Applicant along with the interest @ 12% per annum till its payment to the applicant.***
- (d) Pass any other or such further order or orders as deemed fit to this Hon'ble Tribunal in order to secure the ends of justice in favour of the applicant.***

2. The factual matrix of the case is that the applicant was employed in the Indian Army on 26.04.1995 and discharged on 30.04.2021 after about 26 years of qualifying service. During the Release Medical Board conducted prior to his retirement, he was found to be suffering from disability, CAS - ACS- AWMI- MOD LV DYSFUNCTION SVD-P/PCI-S LAD (ICD 25.5) @ 50% for life and his medial category was permanently downgraded to P2(P); while his disabilities were held to be Not Attributable Not Aggravated (NANA).

3. The initial claim of the applicant for the disability pension was rejected by the Competent Authority and the outcome of the same was communicated to the applicant vide EME Record letter No.14635679P/DP-4 dated 28.08.2021. Thereafter, the applicant sent a first appeal on 30.12.2021, which was defective and was again sent by the EME Records to competent authority on 21.06.2021 vide letter No.14625679P/DP-4/Pen. The applicant in the meantime sent legal notice which was replied to by letter No.14625679P/LN dated 03.02.2022 rejecting the claim. Aggrieved by the aforesaid rejection, the applicant has filed this OA.

4. Learned counsel for the applicant stresses that the disability was detected on 17.02.2021, after more than 26 years of Military service due to continuous stress and strain of Military service, dietary compulsion of service and lack of time for proper rest, exercise and walking wherein the causal connection of the disability is clearly established with the Military service.

5. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of **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 Military 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.

6. Per Contra, learned counsel for the respondents submits that under the provisions of Rule 179 of the Pension Regulations for the Indian Army, 1961 (Part-I), and Para 53 of the Pension Regulations for the Army, 2008 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.

7. 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.

8. Learned counsel further submits that the applicant was a regular smoker, and the same has been endorsed in the Special Opinion dated 12.03.2021 and further noted in his Release Medical Board dated 06.04.2021 by justifying the disease as a lifestyle disease. However, since the patient was a chronic smoker, there was a high risk factor in causation of Atherosclerotic heart disease leading to CAD-AWMI and, therefore, the ID has been caused due to personal neglect.

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 179 of the Pension Regulations for Indian Army, 1961 (Part-I) and Para 53 of Pension Regulations for Army, 2008. The only question that arises in the above backdrop is whether disability suffered by the applicant was attributable to or aggravated by military service.

10. Moreover, the perusal of medical records clearly reveal that the applicant is a chronic smoker, and has been regularly advised to quit smoking, but it seems the same has not been complied with and therefore, the argument that the applicant suffered the disability due to stress and strain of the service is wholly unfounded on the simple reasoning that the organization cannot be held liable for the own actions of the applicant.

11. We cannot shy away from the fact that the disability - Coronary Artery Disease is due to interplay of metabolic and lifestyle factors and the fact that the applicant was a chain smoker and has himself invited the disability, and in such a case, it would be grossly unjustified for us to ignore the aforesaid facts.

12. Applying the above parameters to the case at hand, we are of the view with respect to disability - CAD, there is no denial from the

fact that if the claimant is himself not responsible enough to control the factors which are well within his voluntary control, he cannot be allowed to garner benefit of such beneficial schemes and provisions.

13. Therefore, in view of our analysis, the OA is liable to be dismissed.

14. Consequently, the O.A. 1292/2022 is dismissed.

15. Pending miscellaneous application, if any, stands disposed of.

16. No order as to costs.

Pronounced in open Court on this 3 day of November, 2023.

(RAJENDRA MEMON)
CHAIRPERSON

(C.P MOHANTY)
MEMBER (A)

/akc/ps