

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

I..

OA 1348/2022

Ex Sub (AEC) Rajesh Kumar
Versus
Union of India & Ors.

... Applicant

... Respondents

For Applicant : Mr. Ved Prakash and Mr Devendra
Kumar, Advocates
For Respondents : Mr. Arvind Kumar, Advocate

CORAM :

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

ORDER
16.10.2023

Vide our detailed order of even date, we have allowed the main OA No. 1348/2022. Faced with this situation, learned counsel for the respondents 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 respondents 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.

[RAJENDRA MENON]
CHAIRPERSON

[C. P. MOHANTY]
MEMBER (A)

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For Applicant

: Mr. Ved Prakash with
Mr. Devedra Kumar, Advocates

For Respondents

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN CP MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application and the reliefs claimed in para 8 read as under:

- (a) Quash the impugned order No. NE/JC805141A/LN/SR/LC dated 17.05.2022 and copy of impugned letter No. PEN GP/JC-805141A/DP dated 01.12.2021.
- (b) Direct the respondents to grant disability element of pension to the applicant duly round off to 50% w.e.f. his date of discharge.
- (c) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date of retirement with all the consequential benefits.
- (d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstance so the case along

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with cost of the application in favour of the applicant and against the respondents.

2. The applicant was enrolled in the Indian Army on 05.11.1996 and discharged from Army Service on 30.11.2021. The applicant submits that for the purpose of Primary Hypertension, the disability has been assessed @ 30% as is evident from the medical records. The composite disabilities for the ailments have been assessed at 35%. Since, the second disability i.e. Dyslipidemia @ 5% for life does not fulfill the requisite of 20%, it does not warrant any consideration.
3. Keeping in view the consistent stand taken by this Tribunal based on the law laid down by the Hon'ble Supreme Court in the case of Dharamvir Singh v. Union of India and others (2013) 7 SCC 316 that Primary Hypertension may arise even in a peace area due to stress and strain of service, we see no reason not to allow the prayer of the applicant with regard to the disability Primary Hypertension, which has been assessed by the competent Medical Board @ 30%.
4. Accordingly, we allow this application and direct the respondents to grant disability element of pension to the applicant for Primary Hypertension @ 30% for life which be rounded off to 50% for life from the date of retirement i.e., 30.11.2021 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, the arrears will be restricted to three years from the date of filing of this OA or the date of applicant's retirement/discharge, whichever is lesser, in keeping with the law laid down in the case of *Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649]*.

5. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order, failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

6. No order as to costs.

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

Pronounced in the open Court on 16 day of October, 2023.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

ps/