

PRINCIPAL BENCH, NEW DELHI

E.

OA 152/2022 with MA 227/2022

Ex MWO Bijay Kumar Sah

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM :

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

ORDER
03.11.2023

Vide our orders of even date, we have allowed the application. Faced with the situation, learned counsel for the respondents makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007 to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[RAJENDRA MENON]
CHAIRPERSON

[C. P. MOHANTY]
MEMBER (A)

COURT No.1
ARMED FORCES TRIBUNAL
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MA 227/2022

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 152/2022

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 @30% 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 Air Force on 01.03.1983 and retired on 31.01.2021 after serving for 37 years, 11 days of qualifying service. The Release Medical Board dated 02.03.2020 held that the applicant was fit to be discharged from service in composite low medical category A4G2(P) for the disability - CAD AWWMI P/PLI LAD (BMS-Old) I22.0 @30% for life, 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 Air Force service (NANA).

5. 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 Air Force 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 Air Force service.

6. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), 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 Air Force 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 Air Force service and that the applicant was overweight and has been observed to consume alcohol and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

8. 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 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I). The only question that arises in the above backdrop is whether disability suffered by the applicant was attributable to or aggravated by military service.

9. 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. Furthermore, we find that the applicant is within the permissible weight limit, and a perusal of the medical opinion dated 09.01.2014 makes it clear the applicant is a social drinker only, therefore, the arguments of Respondents does not hold ground.

10. 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).

11. 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 air force service.

12. Therefore, in view of our analysis, the OA is allowed and Respondents are directed to grant benefit of disability pension @ 30% 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. 31.01.2021.

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.

13. Consequently, the O.A. 152/2022 is allowed.

14. No order as to costs.

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

(JUSTICE RAJENDRA MENON)
CHAIRPERSON


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

/ps/