

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

B.

OA 1622/2021 with MA 3615/2023

Ex Sgt Parvin Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Baljeet Singh, Advocate
For Respondents : Mr. Arvind Kumar, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
17.10.2023

Vide our detailed order of even date we have dismissed the OA 1622/2021. Learned counsel for the applicant 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 applicant and on perusal of 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, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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ORDER

MA 3615/2023

This is an application filed on behalf of the respondents for condonation of delay of 22 days in filing the counter affidavit. In view of the reasons explained in MA 3615/2023 and in the interest of justice, the MA 3615/2023 is allowed and the delay of 22 days in filing the counter affidavit is condoned.

OA 1622/2021

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) *To set aside the impugned order Air HQ/99798/1/796544/DAV/DP/CC dated 03.12.2020.*
- (b) *To direct the respondents to grant the disability pension @ 30% with effect from the date of discharge for life by considering the disability as attributable and aggravated by the military service.*
- (c) *To direct the respondents to grant the benefit of rounding off of the disability of the applicant @ 50% (30% to be rounded off to 50%) with effect from the date of discharge with all consequential benefits.*
- (d) *To direct the respondents to pay the due arrears of disability pension with interest @ 12% p.a. with effect from the date of discharge till actual payment.*
- (e) *To pass such orders, direction/ directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.*

BRIEF FACTS

2. The applicant was enrolled in Indian Air Force on 03.02.2000 and was discharged from service on 29.02.2020 under the clause "On fulfilling the condition of enrolment" after rendering 20 years and 27 days of regular service. The applicant was categorized as A4G2(P) for the disability of "Primary Hypertension (Old). The applicant was subjected to Release Medical Board (RMB) on 07.05.2019 whereby his percentage of disability was assessed @ 30%, however, net

qualifying percentage for disability was nil for life as the disability was adjudged as neither attributable nor aggravated to military service.

3. The grant of disability pension was rejected by AOC AFRO vide letter RO/3305/3/Med dated 30.06.2019 and communicated to the applicant vide letter no AIR HQ /99798/1/796544/02/20/DAV(DP/RMB) dated 09.10.2019, with an option that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of letter.

4. The legal notice of the applicant dated 16 November 2020 was replied vide respondents letter no Air HQ/99798 /1/796544/DAV/DP/CC dated 03.12.2020. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in terms of Section 21 (1) the AFT Act, 2007, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

5. The learned counsel for the applicant submitted that the applicant is a Clerk Equipment Accounting (Clk EA) by trade

and has put in 20 years and 27 days of long service in the Indian Air Force.

6. The learned counsel for the applicant submitted that in addition to harsh conditions of service, dietary compulsions of military life including frequent changes in weather and social environment at different geographical locations were the main causes of stress and strain on the applicant.

7. The learned counsel for the applicant placed reliance on the orders of the Armed Forces Tribunal, Principal Bench at New Delhi in the cases of **Sub Ashok Kumar Malik Vs Union of India & Ors**, in OA 470 of 2022, and **Sgt Ratan Kumar Roy (Retd.) Vs. UOI & Ors.** in OA 824/2020, wherein reliefs were granted to the similarly situated applicants in those cases.

8. The learned counsel for the applicant also placed reliance on the verdicts of the Hon'ble Supreme Court of India in **Dharamvir Singh Vs Union of India & Others** (Civil Appeal No. 4949/2013); (2013 7 SCC 316, **Sukhvinder Singh Vs.**

UOI & Ors. in 2014 STPL (Web) 468 SC and **UOI & Ors Vs. Ram Avtar**, (Civil Appeal No. 418 of 2012).

9. Per contra the respondents submit that the disability of Primary Hypertension is basically a lifestyle related disorder and in the instant case its onset was in a peace station. The learned counsel further submitted that there was no delay in diagnosis / Treatment of the applicant for the said disease. The learned counsel also submitted that prior to onset of the disability, the applicant had served only in peace stations from October 2018, and there has been no close time association of military service with the onset and progression of the disability and hence, the disability is NANA as per para 43 of GMO 2008.

10. The learned counsel for the respondents also submitted that the applicant was overweight and he was advised to reduce his weight. The learned counsel for the respondent submitted the weight chart of the applicant which reads as under:-

Date	Type of Med Exam	Actual Weight	IBW (In	Over Weight	BMI	Advice
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		in KG	KG)	%		
03.06.2009	Annual	85	70.5	20.53	26.2	Advice to Reduce weight
27.04.2010	Annual	87	70.5	16.31	25.30	Advice to Reduce weight
09.06.2011	Annual	88	72	24.8	27.16	Advice to Reduce weight
09.03.2012	Annual	85	72	18	26.2	Advice to Reduce weight
08.03.2013	Annual	84	74	13.5	25.9	
30.03.2015	Annual	88	75	2SD	26.86	
30.03.2016	Annual	84	75	10.71	25.64	Advice to Reduce weight
21.07.2016	Annual	89	75	18.67	27.17	Advice to Reduce weight
18.07.2017	Annual	84	75	12	25.64	Advice to Reduce weight
11.10.2018	Annual	88	75	3SD	26.86	-

11. The learned counsel for the respondents submits that the disability of Hypertension of the applicant is directly related to his overweight.

12. The learned counsel for the respondents placed reliance on the order of the Armed Forces Tribunal, Principal Bench at New Delhi in the case of **Col (Mrs.) Dropadi Tripathi (Retd.)**

Vs Union of India & Ors, in OA 1843 of 2018, decided on 13.04.2023, wherein the claim of disability pension for Primary Hypertension was disallowed because the applicant therein was found to be overweight.

ANALYSIS

13. It is a fact that the applicant vide RMB dated 07.05.2019 has been assessed with the disability of Primary Hypertension @ 30% which has been attributed as NANA by the RMB.

14. A perusal of the weight chart of the applicant from 2009 to 2018 along with his Body Mass Index (BMI), reveals that he has been overweight since 2009. The applicant was advised regularly to reduce his weight from June 2009 to July 2017. The applicant was overweight by more than 12% even at the time of his RMB.

15. The publication released by World Health Organization titled "Hypertension" assessed through internet on 16.03.2023 was examined by us and which reads to the effect:-

“Hypertension (high blood pressure) is when the pressure in your blood vessels is too high (140/90 mmHg or higher). It is common but can be serious if not treated.

People with high blood pressure may not feel symptoms. The only way to know is to get your blood pressure checked.

Things that increase the risk of having high blood pressure include:

- older age
- genetics
- being overweight or obese
- not being physically active
- high-salt diet
- drinking too much alcohol

Risk factors

- Modifiable risk factors include unhealthy diets (excessive salt consumption, a diet high in saturated fat and trans fats, low intake of fruits and vegetables), physical inactivity, consumption of tobacco and alcohol, and being overweight or obese.”

This bulletin of WHO specifically brings out the effect of overweight/obesity on hypertension.

16. Additionally, this Tribunal, while dealing with disability pension for disabilities ‘Obesity and Hypertension’ in O.A No 1656/2019, titled ***Ex HFO Gyanendra Singh vs Union of India & Ors***, has dismissed the case on merit which was also

upheld by the Hon'ble Supreme Court in Civil Appeal Diary No. 21017/2019 decided on 08.07.2019.

CONCLUSION

17. In view of the aforesaid contentions and the parameters referred to above, and the fact that the applicant was overweight prior to the onset of the hypertension and the correlation of Primary Hypertension and of being overweight, we are of the view that the weight of the applicant is a contributory factor towards the onset of the primary hypertension and the applicant is thus not entitled to the grant of disability element of pension. We are not inclined to grant any relief to the applicant and the original application stands dismissed.

There is no order as to costs.

Pronounced in the open Court on this day of 17th October 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

Pooja

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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