

COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

A

OA 1852/2019

Ex JWO Naresh Kumar Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Bijendra Kumar Pathak, Advocate
For Respondents : Mr Satya Ranjan Swain, Advocate

CORAM

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

ORDER
04.08.2023

Order partially allowing the OA pronounced, signed
and dated.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

C
(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

CHANANA

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ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

- “(a) Primary Hypertension (Old), Morbid Obesity, PIVD L4-L5 (Operated) as well as Pre-Diabetes in view of the composite percentage 9i.e. 50% to be rounded 75%) as mentioned Release Medical Board;*
(b) To direct the Respondents to grant the applicant with the 75% disability pension (rounding of) from the date of discharge i.e. w.e.f 31.03.2019;
(c) To direct the respondents to pay arrears from the date of discharge along with 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.”

BRIEF FACTS

2. The applicant was enrolled in the Indian Air Force on 23.03.1984 and discharged from the Air Force service on 31.03.2019 under the clause "On transfer to pension establishment other than request" after rendering 35 years and 09 days of regular service. The Release Medical Board dated 12.09.2018 held that the applicant was fit to be discharged from service in composite low medical category A4G4 (P) for the disabilities of (i) Primary Hypertension @30% (ii) Morbid Obesity @Nil (iii) PIVD L4-L5 (optd) @20% and (iv) Pre Diabetes (IFG+IGT) @15-19% compositely assessed @50% for life. The RMB has considered the IDs (i), (ii) and (iv) as neither attributable to nor aggravated by Air Force service. Disability (iii) was assessed as considered aggravated by service. The net qualifying element for disability was recorded as 20% for life in relation to the disability of PIVD L4-L5 (optd).

3. On adjudication, the AOC AFRO has upheld the recommendations of the RMB and accepted the disability pension claim for the disability of PIVD L4-L5 vide letter No. RO/3305/3/Med dated 06.02.2019 and hence the applicant was allowed the disability element of pension for disability of PIVD L4-L5 @20% (20% rounded off to 50%) w.e.f. 01.04.2019 for life. Aggrieved by the rejection of the claim for remaining disabilities from the respondents, the applicant has filed the present the OA. In the

interest of justice thus, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT, Act 2007.

CONTENTION OF THE PARTIES

4. The learned counsel for the applicant submitted on 19.07.2023 that the prayer made in the present OA is confined to the grant of the disability element of pension in relation to the disabilities of Primary Hypertension (Old) and PIVD L4-L5 (Optd) and the prayer made for grant of disability element of pension in relation to the disabilities of Pre-Diabetes (IFG+IGT) and Morbid Obesity is not pressed. During the course of submissions made on 02.08.2023, learned counsel for the applicant submits that he presses the prayer for the grant of the disability element of pension for the disability of Pre Diabetes (IFG+IGT) too.

5. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]***, the learned counsel for the applicant submitted 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 and thus thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service.

6. The learned counsel for the applicant placed reliance on the verdicts of the Hon'ble Supreme Court in the case of *Civil Appeal No 418/2012* titled *Union of India vs. Ram Avtar* Dated 10.12.2014. The learned counsel of the applicant also placed reliance on the decisions of the AFT, Regional Bench, Guwahati in OA 31/2014 titled *Ex Hav Jhunu Kumar Das vs UOI & Ors* dated 27.01.2016 and of the AFT, Regional Bench, Lucknow titled *Lt Col Triveni Chandra Pandey vs UOI & Ors* wherein similarly situated personnel were given relief.

7. Per contra, the 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. In other words, disability pension is granted to those who fulfill the following two criteria simultaneously:-

(i) Disability must be either attributable to or aggravated by service.

(ii) Degree of disablement should be assessed at 20% or more.

The learned counsel further submits that the RMB has assessed the applicant's three disabilities viz. (i) Primary Hypertension, (ii) Morbid

Obesity and (iii) Pre Diabetes (IFG+IGT) as neither attributable to nor aggravated by service as the criteria (i) as above is not fulfilled, the applicant is not entitled to the grant of disability pension for the disabilities of Primary Hypertension @30%, Morbid Obesity @Nil and Pre Diabetes (IFG+IGT) @ 15-19% in accordance with prevailing rules and policies.

8. The learned counsel for the respondents also submitted the weight record chart of the applicant which reads as under:-

Date	Weight (Kg)	Waist (cm)	Hip (cm)	WHR	BMI	Signature of CO
20 Jan 2012	110	108	114	0.94	33.20	-
15 Feb 2012	110	108	114	0.94	33.20	-
13 Mar 2012	110	108	114	0.94	33.20	-
24 Apr 2012	110	108	114	0.94	33.20	-
22 May 2012	110	108	114	0.94	33.20	-
18 Jun 2012	110	108	114	0.94	33.20	-
17 Jul 2012	110	108	114	0.94	33.20	-
22 Aug 2012	110	108	114	0.94	33.20	-
20 Sep 2012	111	109	114	0.95	33.51	-
17 Oct 2012	111	109	114	0.95	33.51	-
09 Nov 2012	112	109	114	0.95	33.81	-
13 Dec 2012	112	109	114	0.95	33.81	-
28 Dec 2012	112	109	114	0.95	33.81	-
09 Jan 2013	112	109	114	0.95	33.81	-
12 Feb 2013	111	109	114	0.95	33.51	-
09 Apr 2013	112	109	114	0.95	33.81	-
10 Jun 2013	110	109	114	0.95	33.20	-
13 Aug 2013	112	109	114	0.95	33.81	-

07 Oct 2013	112	109	114	0.95	33.81	-
06 Nov 2013	112	109	114	0.95	33.81	-
06 May 2014	108	108	114	0.94	32.60	-
09 June 2014	108	108	114	0.94	32.60	-
10 July 2014	106	108	112	0.96	32.00	-
08 Aug 2014	106	108	112	0.96	32.00	-
11 Sep 2014	108	108	114	0.94	32.60	-
17 Oct 14	108	108	114	0.94	32.60	-
12 Nov 14	108	108	114	0.94	32.60	-
15 Dec 14	108	108	114	0.94	32.60	-
20 Jan 15	106	108	112	0.96	32.00	-
20 Feb 15	110	110	112	0.98	33.20	-

The learned counsel further submitted that the Ideal Body Weight was 75.5 KGs and the applicant was overweight by 60% at the RMB. The learned counsel for the respondents submitted that the disabilities of Primary Hypertension and Pre Diabetes were primarily due to the Morbid Obesity of the applicant.

9. The learned counsel for the respondents placed reliance on the orders passed by Armed Forces Tribunal, Principal Bench at New Delhi in case of *Ex (HFO) Gyanendra Singh*, in OA 1656/2016, decided on 20.02.2019, wherein the claim of disability pension for Primary Hypertension and IGT was disallowed because the applicant therein was found to be overweight.

ANALYSIS

10. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that the applicant has suffered from four disabilities viz. (i) Primary Hypertension @ 30% for life, (ii) Morbid Obesity @ NIL, (iii) PIVD L4-L5 (optd) @ 20% & Pre-Diabetes (IFG-IGT) @15-19% for life. In so far as the disability of Morbid Obesity @ NIL is concerned, the learned counsel for the applicant did not press for it. In so far as the disability of PIVD L4-L5 (optd) is concerned, the said disability is assessed @ 20% and also considered aggravated due to military service fulfilling the twin criteria as per Rule 153 Pension Regulation for IAF, 1961 (Part-1) and is admissible. In so far as the disability of Pre-Diabetes (IFG+IGT) is concerned, it is assessed at 15-19%, it does not fulfill the twin criteria as per Rule 153 Pension Regulation for IAF, 1961 (Part-1) and is inadmissible.

11. In so far as the disability of Primary Hypertension is concerned, a perusal of the weight record chart of the applicant from January 2012 to February 2015 alongwith his Body Mass Index (BMI), reveals that the applicant has been overweight and his BMI is well above the normal limit of 25. The applicant was overweight by 60% even at the time of his RMB.

12. 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.

CONCLUSION

13. 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 overweight, we are of the view that weight of the applicant is a contributory factor toward the onset of the primary hypertension and the applicant is not entitled to the grant of disability element of pension for the disability of Primary Hypertension.

14. The OA 1852/2019 is thus, partially allowed and the Respondents are directed to *grant the benefit of the disability element of pension @20% for life* for PIVD L4-L5 (optd) *rounded off to 50% for life* in view of judgment of Hon'ble Apex Court in *Union of India versus Ram Avtar (supra) from the date of discharge i.e 31.03.2019*. 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.

14. No order as to costs.

Pronounced in the open Court on 4 day of Aug, 2023.


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)


[JUSTICE ANU MALHOTRA]
MEMBER (J)

/sp/