

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

55.

OA 2693/2022 WITH MA 3797/2023

HFO Suresh Kumar Dahiya (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Dhiraj Kumar,
 Mr. Tatsat Shukla, Advocates
 For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM :

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

ORDER
14.09.2023

MA 3797/2023

Counter affidavit has been filed. There being delay in filing the same, this application has been filed seeking condonation of delay. Delay is condoned. Counter affidavit is taken on record. MA stands disposed of.

OA 2693/2022

2. Invoking the jurisdiction of this Tribunal; under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

"a. To quash and set aside the applicant's RMB proceedings to the extent the order denies the grant of Disability Pension to the applicant, and

b. To direct the respondents to set aside the impugned order and direct the respondents to grant the disability pension @33.3%, with benefit of broad-banded to 50% along with arrears & interest @ 10% p.a. from the

date of discharge, by treating disease as attributable to and aggravated by military service with all consequential benefits, in view of the Hon'ble Apex Court Judgment in **Rajbir Singh (Supra) and Dharamvir Singh (Supra).**"

3. Even though the applicant is found to be suffering from the following three ailments viz. (i) Primary Hypertension and (ii) Dyslipidemia, the composite disability for the two ailments have been assessed at 33.5%, during the course of hearing today, learned counsel for the applicant made a fair statement that for the present in this application, the applicant would only be praying for disability pension pertaining to one ailment i.e., Primary Hypertension and he gives up his claim for all other ailments.

4. The applicant submits that for the purpose of Primary Hypertension, the disability has been assessed @ 30% as is evident from the medical records.

5. 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%.

6. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 30% rounded off

to 50% with effect from the date of his discharge. All other claims stand rejected.

7. The respondents are directed to grant disability element of pension to the applicant @ 30% for life which be rounded off to 50% for life from the date of retirement 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]**.

8. 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.

9. No order as to costs.

[RAJENDRA MENON]
CHAIRPERSON

[P.M. HARIZ]
MEMBER (A)

Priya