

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

D.

OA 2793/2022 with MA 3799/2022

Ex - NC (E) Rattan Lal

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant : Mr. Praveen Kumar, Advocate

For Respondents : Mr. R S Chhillar, Advocate

CORAM

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

ORDER
18.12.2023

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.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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ORDER

MA 3799/2022

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 2793/2022

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 12.05.1994 and retired on 31.01.2022 after serving for approximately 27 years 08 months and 19 days of regular service. The Release Medical Board dated 02.06.2021 held that the applicant was fit to be discharged from service in composite low medical category A4G4(P) for the disabilities - (i) CAD-SVD- PTCA to PLV (OLD) (ICD 125, Z09.0) @ 30% for life and (ii) PRIMARY HYPERTENSION @30% for life with composite disabilities @ 50% (51% rounded off to 50%) 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 military service (NANA).

5. The initial claim of the applicant for grant of disability pension was adjudicated by the competent authority and rejected vide letter No. Air HQ/99798/1/823143/01/22/DAV(DP/RMB) dated 11.03.2022 stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service. Subsequently, applicant preferred first appeal dated 20.04.2022, which is under

process. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

6. 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 Indian 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 military service.

7. 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.

8. Relying on the aforesaid provision, Learned Counsel for the respondents further submits that the aforesaid disabilities of the applicant were assessed as "neither attributable to nor aggravated"

by military service and not connected with the military service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

9. 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 both the disabilities were 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 disabilities suffered by the applicant were attributable to or aggravated by military service.

10. 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.

11. 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). In the instant case, we have observed that the composite assessment of both the disabilities have been rounded down from 51% to 50% without ascribing any reason by the competent medical authority. However that does not in any way alter our conclusion below.

12. 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.

13. Therefore, in view of our analysis, the OA is allowed and Respondents are directed to ***grant benefit of disability element of***

pension compositely @ 51% for life ((i) CAD-SVD- PTCA to PLV (OLD) (ICD 125, Z09.0) @ 30% and (ii) PRIMARY HYPERTENSION @30%) ***rounded off to 75% in view of judgement of Hon'ble Apex Court in Union of India versus Ram Avtar (supra).*** from the date of discharge i.e. 31.01.2022. 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.

14. Consequently, the O.A. 2793/2022 is allowed.

15. Miscellaneous application, if any, pending stands closed.

16. No order as to costs.

Pronounced in the open Court on 18 day of December, 2023.



(JUSTICE RAJENDRA MENON)
CHAIRPERSON


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

/ps/