

**COURT No.1**  
**ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH: NEW DELHI**

**OA 40/2022**

**Gp Capt (TS) Harsha Wardhan Kumar (Retd) ... Applicant**  
**Versus**  
**Union of India and Ors. ... Respondents**

**For Applicant : Mr. Ajit Kakkar, Advocate**  
**For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC**

**CORAM**

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

**ORDER**

Invoking Section 14 of Armed Forces Tribunal Act,  
 2007, the instant OA has been filed praying for following  
 prayers :-

- (a) To set aside the rejection letters of the disability pension dated 12.07.2021 and 14.12.2021.*
- (b) To direct the respondents to grant disability pension to the applicant from the date of retirement that is 16.07.2021.*
- (c) To direct the respondents to grant broad banding of disability pension from 30% to 50%.*
- (d) To direct the respondents to issue a corrigendum PPO with the necessary changes pertaining to the disability and broad banding of the disability pension.*
- (e) To direct the respondents to issue a corrigendum PPO with the necessary changes pertaining to the disability and broad banding of the disability pension.*
- (f) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.*

2. The factual matrix of the case is that the applicant  
 was commissioned in the Indian Air Force on 17.08.1985

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and was permanently commissioned in the Indian Air Force on 21.06.1993 and retired on 15.07.2021 after about 35 years of qualifying service. During the Release Medical Board conducted prior to his retirement, he was found to be suffering from disability, DYSLIPIDEMIA (OLD) @ 5% and PRIMARY HYPERTENSION (OLD)@ 30% for life and his medial category was permanently downgraded to A4G2(P), while his disabilities were held to be Not Attributable Nor Aggravated (NANA).

3. The initial claim of the applicant for the disability pension was rejected by the Competent Authority vide letter dated 12.07.2021. Thereafter, the applicant sent First Appeal, dated 09.08.2021 which was replied to by the Competent Authority vide letter dated 14.12.2021 rejecting his appeal for disability pension. Aggrieved by the aforesaid rejection, the applicant has filed this OA.

4. Ld. Counsel for the Applicant stresses that the disability was detected in August 2020, after more than 35 years of Air Force service due to continuous service stress, and strain of Air Force service, dietary compulsion of service

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and being posted to different field areas including High Altitude Area and lack to time for proper rest, exercise and walking wherein the causal connection of the disability is clearly established with the Air Force service.

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

8. Ld. Counsel further argues that the weight of the applicant was 71 kg in 1995, and that gradually gained weight and by the time of onset of the disability, applicant was overweight by around 17 kgs, purely due to dietary indiscretion, lack of exercise and a sedentary lifestyle, and his own lack of health consciousness, hence, the disabilities can not be held attributable to or aggravated by service as he is solely responsible for his unreasonable weight gain in violation of the service requirements of maintaining physical fitness at all times.

9. On the careful perusal of the materials available on record and also the submissions made on behalf of the

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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). Since, the first disability does not fulfill the requisite of 20%, it does not warrant any consideration. Now, the only question that arises in the above backdrop is whether the second disability suffered by the applicant was attributable to or aggravated by military service.

10. It is relevant to note that the applicant is constantly overweight ranging between 12-17 Kgs in the period from 24.03.2008 to 07.09.2020 with his actual weight ranging between 79-83 Kgs as against the Ideal weight of 65-67 Kgs. However, at the time of onset of the disability - PHT, the applicant is found to be overweight by approximately 14-17 kgs, with his Actual weight ranging between 81 Kgs on 17.03.2020 to 83 Kgs on 07.09.2020 wherein his disability was freshly detected.

11. We have further analysed the subsequent Re-

categorisation Medical Boards and we find the same trend, with the applicant not reducing the weight even after slew of directions advised by the medical experts including brisk walking, jogging and reducing the weight. However, we observe that the weight has not been reduced, thereby, clearly showcasing that onset of disability is the result of the applicant being alarmingly overweight. Moreover, the the perusal of medical records clearly reveal that the applicant is a regular smoker, and has been regularly advised to quit smoking, but it seems the same has not been complied with and therefore, the argument that the applicant suffered the disability due to stress and strain of the service is wholly unfounded on the simple reasoning that the organisation cannot be held liable for the own actions of the applicant.

12. We cannot shy away from the fact, that the disability - PHT is due to interplay of metabolic and lifestyle factors and failure in maintaining the ideal body weight which can be managed by regular exercise and restricting diet, and the fact that the applicant is alarmingly overweight signifies that the applicant has remained obese over a period of time,

thereby, himself inviting the disability, and in such a case, it would be grossly unjustified for us to ignore the aforesaid facts.

13. Applying the above parameters to the case at hand, we are of the view with respect to disability - PHT, there is no denial from the fact that if the claimant is himself not responsible enough to control the factors which are well within his voluntary control, he cannot be allowed to garner benefit of such beneficial schemes and provisions.

14. Therefore, in view of our analysis, the OA is liable to be dismissed.

15. Consequently, the O.A. 40/2022 is dismissed.

16. No order as to costs.

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

**(RAJENDRA MEMON)**  
**CHAIRPERSON**

**(C.P. MOHANTY)**  
**MEMBER (A)**