

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

115.

OA 40/2023 with MA 4637/2023

Ex-MWO Dinesh Prasad

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Baljeet Singh & Deepika Sheoran,
Advocate

For Respondents : Mr. Neeraj Sr CGSC,

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER
29.11.2023

MA 4637/2023

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

OA 40/2023

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 set aside the Release Medical Board dated 16.03.2021 (Annexure A-1).
- (b) Direct the respondents to grant disability element of pension @ 30% with effect from the date of discharge by treating the disability of the applicant as attributable to and aggravated by the Air Force service.

- (c) To direct the respondents to grant the benefit of rounding off of disability element of pension of the applicant @ 50% (30% to be rounded off to 50%) with effect from date of discharge with all consequential benefits.
- (d) To direct the respondents to pay the due arrears of disability element of pension with interest @ 12% p.a. with effect from the date of discharge till actual payment.
- (e) To pass further order or orders, direction/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.

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

3. 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%.

4. 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.

5. 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].

6. 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.

7. Pending MAs, if any, stand closed. There is no order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT. GEN. P.M. HARIZ]
MEMBER(A)

/sm/