

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 47/2020

Ex MWO Ravi Kant Gupta

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Ved Prakash, Advocate

For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM :

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

ORDER

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

- (a) *Quash impugned letter No. Air HQ/ 99798/1/667922/DAV/DP/CC dated 18.12.2019 and Impugned Order No. Air HQ /99798 /1/667922/02/19/DAV(DP/RMB) dated 09.10.2018..*
- (b) *Direct the respondents to grant disability element of pension duly rounded off to 50% w.e.f his date of discharge.*
- (c) *Direct respondents to pay the due arrears of disability element with interest @ 12% p.a from the date of retirement with all the consequential benefits.*

- (d) ***Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.***

BRIEF FACTS

2. The applicant was enrolled in Indian Air Force on 26.06.1980 and discharged from service on 28.02.2019 under the clause "On attaining the age of superannuation" after rendering 38 years and 248 days of regular service. The applicant was found fit to be released in low medical category A4G2(P), for the disability of "Diabetes Mellitus Type-2". The applicant was subjected to a Release Medical Board (RMB) on 27.03.2018 whereby the percentage of composite disability was assessed @ 20%, however, the net qualifying percentage for the disability was nil for life as the disability was adjudged as neither attributable to nor aggravated by military service.

3. On adjudication, the AOC AFRO upheld the recommendations of the RMB and rejected the disability pension claim vide letter no. RO/3305/3/Med dated 27 August 2018. The outcome of the same was communicated to

the applicant vide letter no Air HQ /99798 /1/667922 /02 /19 /DAV (DP/RMB) dated 09.10.2018 with an advice that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of letter.

4. The legal notice of the applicant dated 12 October 2019 was replied to vide the letter of the respondents no. Air HQ/99798/1/667922/DAV/DP/CC dated 18.12.2019. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in terms of Section 21 (1) the AFT Act, 2007, we take up the same for consideration.

CONTENTION OF THE PARTIES

5. The learned counsel for the applicant submitted that the applicant joined the IAF on 26.06.1980 and was discharged from the service on 28.02.2019 in the rank of Master Warrant Officer after rendering 38 years, 08 months and 02 days of long service in the Indian Air Force.

6. It was further submitted that the applicant was subjected to a thorough medical examination conducted by the medical

board at the time of his entry into service which found the applicant medically fit to join the service in Indian Air Force and he was posted to various Air Force units in varied geographical conditions.

7. It was submitted on behalf of the applicant that in addition to conditions of service, dietary compulsions of military life including frequent changes in weather and social environment at different geographical locations were the main causes of stress and strain on the applicant.

8. It was further submitted on behalf of the applicant that the prolonged stressful working conditions, strict military discipline, dietary compulsions and various other socio-geographical factors has immensely contributed to the onset and aggravation of the applicant's disability.

9. The learned counsel for the applicant submitted that the instant case is squarely covered by the judgments of the Hon'ble Supreme Court in the case of **Ex Power Satyaveer Singh Vs Union of India**, in Civil Appeal No. 7368/2011, **Union of India Vs Angad Singh Titaria**, (AIR 2015 SC 1898) Civil Appeal No. 11208, CA No 2904 of 2011 and in the case of

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Union of India & Ors. Vs Rajbir Singh dated 13 February, 2015.

10. Reliance was also placed on behalf of the applicant on order of this Tribunal in OA no. 360 of 2013 in case of **Sub Dharmendra Kumar Jha Vs Union of India** dated 20.08.2014, **Ex MWO RA Singh Vs Union of India.**, OA No 674 of 2014 dated 04.09.2015, wherein similarly situated personnel were given relief.

11. Per contra the learned counsel for the respondents submits that the Diabetes Mellitus Type-2 disability is basically a lifestyle related metabolic disorder and the onset occurred in peace station. The learned counsel further submitted that prior to the onset of the disability, the applicant has served only in peace stations since 1980 and the onset of the disability occurred in March 2015 and there has been no close time association of military service with stress and strain or dietary compulsions of field/HAA/CIOps. Hence, the disability is NANA as per para 26 of Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008.

12. The learned counsel for the respondents also submitted that the applicant was overweight and was advised to reduce his weight. The learned counsel for the respondent submitted the weight chart of the applicant which reads as under:-

Date	Actual Weight in KG	Ideal Weight In KG	Over Weight %	Advice
18.07.2001	77	67	14.9	Reduce body weight by diet control & regular exercise
May 2002	76.5	66	15.9	Reduce body weight by diet control & regular exercise
26.02.2003	77	66	16.6	Reduce body weight by diet control & regular exercise
16.03.2004	78	66	18.18	Reduce body weight by diet control & regular exercise
15.02.2005	78	66.5	17.29	Reduce body weight by diet control & regular exercise
02.08.2006	79	66.5	18.79	Found fit in Med cat A4G. fit for fail duties it his "illegible" unfit adv to reduce wt. by 3 to 6 kg by regular exercise and diet control monthly not record "illegible"
01.09.2007	79	66.5	18.79	
28.07.2008	80	66.5	13.5	
11.08.2009	83	67.5	22.96	
14.07.2010	80	67.5	19	Reduce body weight by diet control & regular exercise
11.08.2011	81	67.5	20	Reduce body weight by diet control & regular

				exercise
17.07.2012	83	67	23.88	Reduce body weight by diet control & regular exercise
23.03.2013	83	67	23.88	Reduce body weight by diet control & regular exercise
16.07.2014	78	67	16.41	Reduce body weight by diet control & regular exercise
28.09.2015	79	66	19.6	Life style modification

13. The learned counsel for the respondents submits that the disability of Diabetes Mellitus of the applicant is directly related to his being overweight.

14. The learned counsel for the respondents placed reliance on the orders passed by the Armed Forces Tribunal, Principal Bench at New Delhi in case of **Col (Mrs.) Dropadi Tripathi (Retd.) Vs Union of India & Ors**, in OA 1843 of 2018, decided on 13.04.2023, wherein the claim of disability pension was disallowed because the applicant therein was found to be overweight.

15. The learned counsel for the respondents also placed reliance on the order passed by the Armed Forces Tribunal, Regional Bench, Chennai in case of **Ex Sub M Vijayakannan Vs. Union of India & Ors**, in OA 121 of 2021 dated

11.09.2023, wherein the claim of disability pension for the disability of Diabetes Mellitus was disallowed.

ANALYSIS

16. It is a fact that the applicant vide RMB dated 27.02.2019 has been assessed with the disability of Diabetes Mellitus Type 2 @ 20% which has been attributed as NANA by the RMB.

17. A bare perusal of the posting profile of the applicant at Annexure R-1 of the counter affidavit reveals that the applicant was posted throughout at peace station prior to the onset of the disability which occurred whilst he was posted to New Delhi in March 2015 which is also a peace station.

18. A perusal of the weight chart of the applicant from 2001 to 2015 indicates that the applicant was overweight since August 2001 and the applicant was advised regularly to reduce his weight from August 2001 till his retirement. The applicant was overweight by more than 23% even at the time of his RMB.

19. The publication released by the National Library of Medicine (National Center for Biotechnology Information) NLM, titled "Diabetes" assessed through internet on 17.11.2023 was examined by us and which reads to the effect:-

"The accumulation of an excessive amount of body fat can cause type 2 diabetes, and the risk of type 2 diabetes increases linearly with an increase in body mass index. Accordingly, the worldwide increase in the prevalence of obesity has led to a concomitant increase in the prevalence of type 2 diabetes. The cellular and physiological mechanisms responsible for the link between obesity and type 2 diabetes are complex and involve adiposity-induced alterations in β -cell function, adipose tissue biology, and multi-organ insulin resistance, which are often ameliorated and can even be normalized with adequate weight loss."

This bulletin of NLM specifically brings out the effect of overweight/obesity on Diabetes.

20. Additionally, this Tribunal, while dealing with disability pension for disabilities 'Obesity and Hypertension' in O.A No 1656/2019, titled ***Ex HFO Gyanendra Singh vs Union of India & Ors***, has dismissed the case on merit which was also upheld by the Hon'ble Supreme Court in Civil Appeal Diary No. 21017/2019 decided on 08.07.2019.

CONCLUSION

21. In view of our aforesaid analysis and the parameters referred to herein above, and the fact that the applicant was overweight prior to the onset of the Diabetes and the correlation between Diabetes Mellitus type II and of being overweight, we hold that the weight of the applicant is a contributory factor towards the onset of the disability of Diabetes Mellitus and that the applicant is thus not entitled to the grant of disability element of pension. We are thus not inclined to grant any relief to the applicant and the O.A 47/2020 stands dismissed.

There is no order as to costs.

Pronounced in the open Court on this day of 6 December 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

Pooja