

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

C.

OA 472/2022

Trilochan Pradhan

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

: Mr. Bijendra Kumar Pathak, Advocate

For Respondents

: Mr. Rajeev Kumar, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

27.09.2023

Vide our detailed order of even date, we have dismissed the main OA No.472/2022. Faced with this situation, learned counsel for the applicant makes an oral prayer for grant of leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the applicant and going through our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order, therefore prayer for grant of leave to appeal stands dismissed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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

OA 472/2022

Trilochan Pradhan (Ex WO)	...	Applicant
Versus		
Union of India and Ors.	...	Respondents

For Applicant	:	Mr. Brijendra Kumar Pathak, Advocate
For Respondents	:	Mr. Rajeev Kumar, Advocate

CORAM

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

ORDER

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 pension.

2. The applicant was enrolled in the Indian Air Force on 02.07.1984 and retired from service on 31.03.2021 after serving for approximately 36 years and 08 months of qualifying service. The Release Medical Board dated 21.07.2020 held that the applicant was fit to be discharged from service in composite low medical category for the disabilities - (i) PRIMARY

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HYPERTENSION (OLD) @ 30% for life & (ii) MIXED ANXIETY DEPRESSIVE DISORDER (OLD) @ 40% 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 Air Force service (NANA).

3. The claim of the applicant for grant of disability pension was rejected on 15.10.2020 vide letter no. RO/3305/3/Med and the same was communicated to the applicant vide letter no. AirHQ/99798/1/679232/03/21/DAV stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by Air Force service and does not fulfil the conditions. Against the said rejection, applicant preferred a first appeal dated 29.06.2021, but the same was rejected vide letter no. AirHQ/99798 /5/679232/1st Appeal/DP/AV-III (Appeals) dated 23.03.2022. Aggrieved by the repeated rejection, the applicant has approached this Tribunal.

4. 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 Air Force service.

5. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Regulation 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.

6. 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.

7. 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 disabilities were assessed to be more than 20% which is more than the bare minimum for grant of disability pension in terms of Regulation 153

Now, the only question that arises in the above backdrop is if the disabilities suffered by the applicant are attributable to or aggravated by Air Force service.

8. As far as disability (ii) is concerned, we find that the Guidelines for assessment of Psychiatric Disorder have been spelt out in the Guide to Medical Officers (Military Pension), 2002 which elaborates in detail the factors which impinge on Attributability and Aggravation of Psychiatric Disorders in Para 54 which are reproduced below:

54. Mental & Behavioural (Psychiatric) Disorders

Psychiatric illness results from a complex interplay of endogenous (genetic/biological) and exogenous (environmental, psychosocial as well as physical) factors. This is true for the entire spectrum of psychiatric disorders (psychosis & Neurosis) including substance abuse disorders. The relative contribution of each, of course, varies from one diagnostic category to another and from case to case.

The concept of attributability or aggravation due to the stress and strain of military service can be, therefore, evaluated independent of the diagnosis and will be determined by the specific circumstances of each case.

(a) Attributability will be conceded where the psychiatric disorder occurs when the individual is serving in or involved in :-

(i) Combat area including counterinsurgency operational area

(ii) HAA Service

(iii) Deployment at extremely isolated posts

(iv) Diving or submarine accidents, lost at sea

(v) Service on sea

(vi) MT accidents involving loss of life or Flying accidents (both as flier and passenger) in a service

aircraft or aircraft accident involving loss of life in the station

(vii) Catastrophic disasters particularly while aiding civil authorities like earthquake, cyclone, tsunami, fires, volcanic eruptions (where one has to handle work in proximity of dead or decomposing bodies)

(b) Attributability will also be conceded when the psychiatric disorder arises within one year of serious/multiple injuries (e.g. amputation of upper/lower limb, paraplegia, quadriplegia, severe head injury resulting in hemiplegia of gross neuro cognitive deficit which are themselves considered attributable to military service. This includes Post Traumatic Stress Disorder (PTSD).

(c) Aggravation will be considered in Psychiatric disorders arising within 3 months of denial of leave due to exigencies of service in the face of:

(i) Death of parent when the individual is the only child/son

(ii) Death of spouse or children

(iii) Heinous crimes (e.g. murder, rape or dacoity) against members of the immediate family

(iv) Reprisals or the threat or reprisals against members of the immediate family by militants/terrorists owing to the fact of the individual being a member of the Armed Forces

(v) Natural disasters such as cyclones/earthquakes involving the safety of the immediate family.

(vi) Marriage of children or sister when the individual is the only brother thereof and specially if their father is deceased.

(d) Aggravation will also be conceded when after being diagnosed as a patient of psychiatric disorder with specific restrictions of employability the individual serves in such service environment which worsened his disease because of the stress and strain involved like service in combat area including counterinsurgency operations, HAA, service on board ships, flying duties.

(e) Attributability may be granted to any psychiatric disorder occurring in recruits and results in invalidment

from service only when clearly identifiable severe stressors including sexual abuse or physical abuse are present as causative factor/factors for the illness.

9. From the material placed on record, and the Medical Board proceedings, we find that the applicant has been granted postings in peace area from the date of his enrollment till his retirement, and there is no evidence to find even a remote causal link to any service related trauma which can be considered to be a contributory factor to the mental condition of the Applicant.

10. Reliance placed by the Ld. Counsel for the applicant on the opinion of the Medical Specialist wherein it has been specified by the Specialist in the heading of 'Relevant History' that he perceived increased responsibilities in the rank when promoted to Warrant Officer and he had to go to senior officers more frequently and was made accountable for some manpower under him, with being shy in nature and having difficulty controlling and commanding people, is unfounded and immaterial as it seems more of a deficiency in service trait rather than a disability accruing from Air Force service. Rather, it is to emphasize that the Air Force is highly disciplined armed force, wherein command and responsibility are the foundation of its functioning, and if a person is found to be lacking on that part, it cannot be claimed that the

said symptoms arise due to Air Force service, if a person is not able to deal with the responsibilities of the rank conferred upon him.

11. As far as Disability (i) Primary Hypertension is concerned, on perusal of the weight chart, we find that the applicant is within a permissible limit of weight, and that the argument of the Ld. Counsel for Respondents that the applicant is overweight is unsubstantiated, and with the issue being no longer res integra in view of the judgement rendered by Hon'ble Supreme Court in ***Dharamvir Singh v. Union of India (supra)*** coupled with several judgements rendered by this Tribunal, the latest being ***Sgt Satyapira Sahoo v Union of India & Ors*** (OA 2269 of 2022), we are of the considered opinion that the disability is attributable to service.

12. 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).

13. Therefore, in view of our analysis, the OA is partly allowed and Respondents are directed to ***grant benefit of disability pension @ 30% for life*** (for PRIMARY HYPERTENSION @ 30 % for life), ***rounded off to 50%*** in view of judgement of Hon'ble Apex Court in Union of India versus Ram Avtar (supra) from the date of discharge i.e. 31.03.2021. 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. 472/2022 is partly allowed.

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

16. No order as to costs.

Pronounced in the open Court on 27 day of September, 2023.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

/ps/