

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

56.

OA 932/2023 WITH MA 4529/2023

WO Rohitas (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

: Mr. Tatsat Shukla, Advocate with
Mr. Dhiraj Kumar, Advocate

For Respondents

: Mr. Rajeev Kumar, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

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

O R D E R
31.10.2023

MA 4529/2023

Counter affidavit has been filed. There being some delay in filing the counter affidavit, this application has been filed seeking condonation of delay. Delay condoned. Counter affidavit is taken on record.

2. MA stands disposed of.

OA 932/2023

3. 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) To quash and set aside the applicant's RMB proceedings to the extent the order denies grant of Disability element of Pension to the applicant.
- (b) To set aside the impugned order and direct the respondents to grant the disability element of

pension @30%, broad-banded to 50% along with all consequential discharge, by treating disease as attributable to and aggravated by military service, in view of the Hon'ble Apex Court Judgment in Rajbir Singh (Supra) and Dharamvir Singh (Supra.

(c) To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.

4. The applicant was enrolled in the Indian Air Force on 16.08.1985 and discharged from Indian Air Force on 31.10.2022 after serving 35 years 02 months and 14 days. The applicant submits that for the purpose of Primary Hypertension, the disability has been assessed @ 30% as is evident from the medical records. The composite disability for the ailment has been assessed at 30%.

5. 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%.

6. 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.

7. 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 i.e. 31.10.2022 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.

8. 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.

9. Pending miscellaneous application, if any, disposed of.

10. There is no order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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