

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

88.

OA 988/2022

Capt (TS) Bhartendra Singh Kanwar (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

: Mr. S.C. Jaidwal, Advocate

For Respondents

: Mr. Rajeev Kumar, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

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

ORDER
22.11.2023

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) Call for relevant records of the applicant and after perusal thereof, set aside the impugned order dated 28 Feb, 2022 passed by the Respondents, rejecting second and final appeal of the applicant for grant of disability pension.
- (b) To direct the respondents to treat both disabilities of the applicant, namely, (i) Diabetes Mellitus Type-II and (ii) Primary Hypertension as attributable to aggravated by stress and strain.
- (c) To direct the respondents to grant disability pension to the applicant @44% for life w.e.f.

01.04.2020, as degree of his disablement has been assessed composite @ 44% for life by the RMB.

- (d) To direct the respondents to pay disability pension to the applicant at enhanced rate of 50% for life w.e.f. 01.04.2020 by broad-banding applicant's disabilities from composite 44% to 50% as per Govt, Policy dated 31.01.2001
- (e) Direct the respondents to pay to the applicant an interest @ 10% p.a. on arrears of the disability pension w.e.f. 01.04.202 and;
- (f) To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.

2. Even though the applicant is found to be suffering from the two ailments viz, (i) Diabetes Mellitus Type-II assessed @ 20% and (ii) Primary Hypertension assessed @ 30%. The composite disability for the two ailments has been assessed at 44% for life. During the course of hearing today, learned counsel for the applicant made a fair statement that for the present in this application, the applicant would only be praying for disability pension pertaining to one ailment i.e. Primary Hypertension and he gives up his claim for all other ailments. 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 i.e. 31.03.2020 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.

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.
8. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Ps
OA 988/2022