

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

2.

RA 36/2023 in OA 1852/2019

Ex JWO Naresh Kumar	Applicant
VERSUS		
Union of India and Ors.	Respondents

For Applicant	:	Mr. Bijendra Kumar Pathak, Advocate
For Respondents	:	Mr. Satya Ranjan Swain, Advocate

CORAM

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

ORDER
15.09.2023

The applicant vide the present RA 36/2023 seeks review of order dated 04.08.2023 in OA 1852/2019. In terms of proceedings dated 04.09.2023, the records of OA 1852/2019 have been put up.

2. Submissions on the application have been addressed on behalf of either side.

3. Vide order dated 04.08.2023 in OA 1852/2019, the prayers made by the applicant therein seeking the grant of the disability element of pension in relation to the disabilities of Primary Hypertension (Old), Morbid Obesity, PIVD L4-L5 (Optd) as well as Pre-Diabetes were disposed of with observations to the effect:-

"14. The OA 1852/2019 is thus, partially allowed and the Respondents are directed to grant the benefit of the disability element of pension @20% for life for PIVD L4-L5 (optd) rounded off to 50% for life in view of judgment of Hon'ble Apex Court in Union of India versus Ram Avtar (supra) from the date of discharge ie 31.03.2019. The arrears shall be disbursed to the applicant within three months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment."

and thus the OA 1852 / 2019 was partially allowed, with the respondents being directed to grant the benefit of the disability element of pension at 20% for life for PIVD L4-L5 (Optd) rounded off to 50% for life in view of the verdict of the Hon'ble Supreme Court in *Union of India* vs *Ram Avtar* decided on 10.12.2014 in Civil Appeal no. 418 of 2012 from the date of discharge i.e. 31/03/2019.

4. As regards the disability of Pre-Diabetes (IFG+IGT), it being assessed at 15-19 % in as much as it did not fulfill the requisite criteria prescribed by Rule 153 of the Pension Regulations for the IAF 1961 Part I, it was held by us to be inadmissible for the grant of the disability element of pension. In relation to the disability of Morbid Obesity assessed at 'Nil' percentage of disablement, the learned counsel for the applicant did not press for the same.

5. In relation to the disability of Primary Hypertension, which had been assessed with the percentage of disablement of 30% with quantifying element of pension for the said disability as being at 'NIL', in view of the factum that a perusal of the Weight Record Chart of the applicant from January 2012 to February

2015 along with his Body Mass Index i.e. BMI revealed that the applicant had been overweight and that his BMI was well above the normal limit of 25 with the applicant being overweight by 60% even at the time of the RMB, it was held by us that the weight of the applicant was a contributory factor towards the onset of the primary hypertension and that the applicant was not entitled to the grant of the disability element of pension in relation to the said disability of primary hypertension in relation to which we held ourselves to be fortified by the view of this Tribunal in *EX HFO Gyanendra Singh's* case in OA 1656 / 2016 decided on 20th February 2019.

6. In view of the submissions that the learned counsel for the applicant had sought to address through the RA and through submissions made on 04.09.2023, it was considered essential to peruse the records of the OA 1852 / 2019 in relation to the submissions that are sought to be made to the effect that the applicant's Obesity was because of his having suffered from PIVD in relation to which he was operated upon in July 2014.

7. The records of OA 1852 / 2019 on a perusal thereof, bring forth clearly that there is not a whisper of an averment in the said OA to indicate to the effect that it was sought to be contended by the applicant that the applicant was suffering from any Obesity or was overweight because of the PIVD L4-L5 that he had been operated upon.

8. Learned counsel for the applicant seeks to submit that it was not necessary for the applicant to so aver,~ the said submission cannot be accepted. A bare perusal of the order which is sought to be reviewed indicates as rightly contended on behalf of the respondents that there is no error apparent on the face of the record in relation there to.

9. A submission is further raised on behalf of the applicant that in as much as the applicant had been operated upon for PIVD L4-L5 in 2014, the same is itself an indicator to the effect that the said disability had commenced much earlier with it having been sought to be submitted on behalf of the applicant that the same had in fact arisen in 2001, as a consequence of which the applicant was prevented to do his exercises of walking etc.

10. Apparently the weight of the applicant as has been brought forth through the weight chart that the respondents had produced on the record indicates, as has already been observed by us vide paragraphs 8, 9 and 10 of the order dated 04.08.2023 that the applicant being overweight by 60% at the time of the RMB does not bring forth the contention of the applicant that he was wholly unable to conduct any exercises to maintain himself in any manner.

10. There is no merit in the application, which is thus dismissed.

11. Learned counsel for the applicant makes an oral prayer for grant of leave to appeal in terms of Section 31 (1) of the AFT Act 2007 to assail the above order before the Hon'ble Supreme Court. After hearing learned counsel for the applicant and on perusal of order in view of the verdicts of the Hon'ble Supreme Court in *Ex LAC Yogesh Pathania vs Union of India & Ors*, in I.A. No. 1/2016 in Civil Appeal D. No. 14214/2016 dated 08.01.2019 and in *Union of India & Ors vs Parashotam Dass* in Civil Appeal No. 447/2023 dated 21.03.2023, 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 to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

AP
15.09.2023