

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

8.

RA 48/2023 with MA 4513/2023 in OA 1947/2020

UOI & Ors Applicants
VERSUS

Ex Sgt Kamlesh Kumar Singh Respondent

For Applicants : Mr. K K Tyagi, Advocate
For Respondent : Mr. Praveen Kumar, proxy for
Mr. Durgesh Kumar Sharma, Advocate

CORAM

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

ORDER
02.11.2023

MA 4513/2023

This is an application filed on behalf of the applicant i.e. Union of India for condonation of delay of 132 days in filing the RA 48/2023. In view of the reasons explained in MA and in the interest of justice, the MA 4513/2023 is allowed and the delay in filing the review application is condoned.

RA 48/2023

The applicant i.e. the Union of India vide the present RA makes the following prayers:-

"It is most respectfully submitted to the Hon'ble Tribunal that MA filed by the applicant for the review of order dated 10.05.2023, hence, the Hon'ble Tribunal may kindly be pleased to allow the MA and review the impugned order dated 10.05.2023 upto the extent that the disability element of pension rounded off to 50%. However, the arrears will be restricted for 3 years from date of filing of the present OA, as per judgment passed by Hon'ble Supreme Court in Tarsem Singh case instead of from the date of his date of discharge, in view of the aforesaid facts and circumstances and in the interest of justice."

Learned counsel Mr. Praveen Kumar submits that he is under instructions from the main counsel for the respondents to argue in the matter and accepts notice of the RA 48/2023.

2. Vide order dated 10.05.2023 OA 1947/2020 was allowed in the following terms:-

*“7. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension in respect of disability ‘Primary Hypertension’. 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 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. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.”

3. The applicant herein i.e. Union of India vide the present RA 48/2023 seeks to the effect that in as much as the applicant of OA 1947/2020 was discharged from the Indian Air Force on 31.12.2014, the grant of the disability element of pension at 30% rounded off to 50% from the date of discharge, vide order dated 10.05.2023 in OA 1947/2020 ought to be curtailed to the grant of the disability element of pension for a period of three years prior to the institution of the OA which in the instant case was instituted on 02.12.2020 with reliance having been placed on behalf of the applicant of the RA 48/2023 on the verdict of the Hon’ble Supreme Court in **UOI & Ors Vs. Tarsem Singh** 2009(1)AISLJ 371.

4. On behalf of the respondent i.e. applicant of the OA 1947/2020 it is submitted to the effect that MA 3733/2023 had been filed by the applicant seeking execution of the order dated 10.05.2023 in OA 1947/2020 and a copy of proceedings dated 13.09.2023 has been submitted therein to submit to the effect in the said application for execution the respondents had sought six weeks time to file the compliance report and it is thus submitted on behalf of the respondent to RA 48/2023, that there has been a deliberate concealment of facts and the powers under Section 340 of CrPC1973 be invoked qua the said submission learned counsel for the applicant of the RA 48/2023 submits to the effect that the submission made on 13.09.2023 in MA 3733/2023 only related to submitting the compliance report in accordance with law after disposal of the RA in question.

5. As regards, the aspect that the applicant in the instant case was discharged from the Indian Air Force on 31.12.2014, the same is borne out through the records of OA 1947/2020. As submitted by the applicant that the OA was instituted on 02.12.2020, is also borne out through the records of OA 1947/2020. Apparently thus, in terms of the verdict of the Hon'ble Supreme Court in *Tarsem Singh* (supra), the grant of the arrears of disability element of pension have to be confined to commence to run from a period of three years to the institution of the OA.

6. As regards, the submission that has been made on behalf of the non-applicant to the effect that in terms of the order dated

13.09.2023 in MA 3733/2023, the applicant of the present application had submitted that a compliance report would be filed and that there was a deliberate concealment of facts, the said submission cannot be accepted as in any event, it is open to either side to seek redressal in accordance with law.

7. In the circumstances of the instant case thus RA 48/2023 filed by the applicant thereof, is allowed and the order dated 10.05.2023 in OA 1947/2020 is reviewed to the extent that it is directed to read to the effect:-

*“7. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension in respect of disability ‘Primary Hypertension’. 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 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. However, the grant of the arrears of the disability element of pension to the applicant who was discharged on 30.12.2014 and who has instituted the present OA on 02.12.2020 shall commence to run from a period of three years prior to the institution of the present OA in terms of the verdict of the Hon’ble Supreme Court in *Tarsem Singh (supra)*.”*

8. The said RA 48/2023 stands disposed of.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)