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

43.

OA 1033/2019 with MA 1709/2019

In the matter of:

Ex MWO Gurvinder Singh Jittal ..... Applicant

Versus

Union of India & Ors. ..... Respondents

For Applicant : Mr. U S Maurya, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM

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

ORDER
13.02.2024

MA 1709/2019

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in ***Union of India and others*** *Vs.* ***Tarsem Singh*** (2008) 8 SCC 648, the same is allowed condoning the delay in filing the O.A.

MA stands disposed of.

OA 1033/2019

Invoking the jurisdiction of this Tribunal; under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and the reliefs claimed in para 8 read as under:

(a) Impugned communication/order 24.05.2011 be set aside; passed by the respondents to the extent this order deny the grant of Disability Element of Disability Pension to the applicant as disability was neither attributable to nor aggravated by military service.

(b) Direct Respondents to grant Disability Pension w.e.f. 01.01.2012 (Date of discharge) @ 50% (after rounding off from 30% to 50%) as applicant's case is squarely covered on the matter of disease neither attributable to nor aggravated by military service by the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India & Ors.** (Civil appeal No. 4949 of 2013 judgment dated 02.07.2013), Union of India Vs. Rahvir Singh (Civil Appeal No. 2904 of 2011 judgment on 13.02.2015 along with the 26 connected appeals), Union of India & Ors. Vs. Angad Singh Titaria (Civil Appeal No. 11208 of 2011 judgment on

24.02.2015), Union of India & Ors. Vs. Manjeet Singh (Civil appeals Nos. 4357-4358 of 2015 (arising out of SLP (Civil) Nos. 13732-13733/2014 judgment dated 12.05.2015), Satwinder Singh V. Union of India and others (Civil appeal No.1695 of 2016 (arising out of SLP (c) No. 22765 of 2011) order dated 11.02.2016), Ex Hav Mani Ram Bharia v. Union of India and others (Civil Appeal No. 4409 of 2011 order dated 11.02.2016) and latest judgment Ex. Anr. Laxmanram Poonia (Dead) Through Lrs. Vs. Union of India and Ors. (Civil Appeal No. 2633 of 2017 judgment dated 22.02.2017) on the matter of disease neither attributable to nor aggravated by military service and on the matter of rounding of disability pension Hon'ble Supreme Court order ated 10.12.2014 in Civil Appeal No. 418/2012 titled Union of India and Ors. Vs. Ram Avtar.

(c) Direct Respondents to grant arrears of Disability Element of Disability Pension wef 01.01.2012 (Date of discharge) with 9% interest as applicant case squarely covered with this Hon'ble Tribunal in ***(OA NO. 1439/2016 title***

Ex Sgt. Girish Kumar Vs. UOI & Ors. Order dated 01.12.2017.

(d) Any other relief which the Hon'le Tribunal may deem fit and proper in the fact and circumstances of the case.

2. 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 @

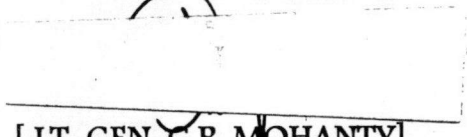
30% rounded off to 50% with effect from the date of his discharge. All other claims stand rejected.

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 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 arrears will be restricted to three years from the date of filing of this OA or the date of applicant's retirement/discharge, whichever is lesser, in keeping with the law laid down in the case of ***Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649].***

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. There is no order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON



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

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