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

75.

OA 3046/2022 WITH MA 1909/2024 AND MA 4263/2022

Capt (TS) R K Sabherwal (Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Shakti Chand Jaidwal, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC

CORAM

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

ORDER
16.07.2024

MA 4263/2022

Keeping in view the averments made in the application and in the light of the decision in *Union of India and others Vs. Tarsem Singh* [(2008) 8 SCC 648), the delay in filing the OA is condoned.

2. MA stands disposed of.

MA 1909/2024

3. 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.

4. MA stands disposed of.

OA 3046/2022

5. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to accept the disabilities of the applicant as attributable to/aggravated by military service and grant disability element of pension @50% rounded of to 75% with effect from the date of retirement of the applicant; along with all consequential benefits.

6. The applicant was enrolled in the Indian Navy on 01.07.1982 and retired on 30.09.2014 after serving for 34 years of qualifying service. The Release Medical Board dated 15.07.2014 held that the applicant was fit to be discharged from service in composite low medical category S2A2(P)PMT for the disabilities - (i) DIABETES MELLITUS TYPE II @20% for life (ii) PRIMARY HYPERTENSION @30% for life and (iii) DYSLIPIDEMIA @ 1-5%, with composite disability @50% while the qualifying element for disability pension was recorded as NIL for life on account of disabilities being treated as neither attributable to nor aggravated by military service

(NANA).

7. The claim of the applicant for grant of disability pension was rejected stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service. Against the said rejection, applicant preferred a first appeal letter No. RK/242/2015 dated 12.03.2015 which was rejected vide letter dated 26.11.2015. Therefore, the applicant preferred second appeal vide letter No. 242/RKS/DP/01 dated 26.11.2022 and the same has been rejected vide letter dated 05.12.2022. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

8. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh*** *v.* ***UOI & Ors*** [2013 (7) SCC 36], learned counsel for applicant argues that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Indian Navy at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by Naval service.

9. Per Contra, learned counsel for the respondents submits that under the provisions of Regulation 28 of the Navy Pension Regulations, 1964, the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Naval service and is assessed @ 20% or more.

10. Relying on the aforesaid provision, learned counsel for respondents further submits that the aforesaid disabilities of the applicant were assessed as "neither attributable to nor aggravated" by Naval service and not connected with the Naval service. Thus, the applicant is not entitled for grant of disability pension due to policy constraints.

11. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the extent of disability was assessed to be above 20% which is the bare minimum for grant of disability pension in terms of Regulation 28 of the Navy Pension Regulations, 1964. The only question that arises for consideration in the above backdrop is as to whether disability suffered by the applicant was attributable to or aggravated by military service.

12. The issue of attributability of disease is no longer *res integra* in view of the verdict of the Hon'ble Apex Court in ***Dharamvir Singh*** *v.* ***Union of India*** (supra), wherein it is clearly spelt out that any disease contracted during service is presumed to be attributable to military service, if there is no record of any ailment at the time of enrollment into the military Service.

13. Furthermore, the issue regarding the attributability of Diabetes Mellitus has been settled by the Hon'ble Supreme Court in ***Commander Rakesh Pande v. Union of India*** (Civil Appeal No. 5970 of 2019) wherein the Apex Court has not only held that the Diabetes Mellitus is a disease which is of permanent nature and will entitle the applicant to disability pension, but also observed that in case where the disability is of permanent nature, the disability assessed by the Medical Board shall be treated for life and cannot be restricted for specific period.

14. Regarding broadbanding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in ***Union of India v. Ram Avtar,*** Civil Appeal No. 418 of 2012 and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India

vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

15. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of medical disease/disability, the disability must be presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, or the applicant being overweight, be presumed to have been attributable to or aggravated by Naval service.

16. Therefore, in view of our analysis, the OA is partly allowed and respondents are directed to grant benefit of disability element of pension compositely assessed @ 44% for *life* (for DIABETES MELLITUS Type II @ 20% and PRIMARY HYPERTENSION @ 30% for life), rounded off to 50% in view of judgement of Hon'ble Apex Court in ***Union of India*** v. ***Ram Avtar*** (supra). However, the arrears shall be restricted to three years from prior to the date of filing of this OA which is 20.12.2022. The arrears shall be disbursed to the

applicant within four months of receipt of this order failing which it shall earn interest @6% p.a. till the actual date of payment.

17. Consequently, the OA 3046/2022 is partly allowed.

18. No order as to costs.

19. Pending miscellaneous applications, if any, stands closed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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