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

162.

OA 1490/2019 with MA 2410/2019

Ex MWO Mohammad Yusuf Khan ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM

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

ORDER
18.03.2024

MA 2410/2019

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*** (2009(1) AISLJ 371), the delay in filing the OA is condoned.

MA stands disposed of.

OA 1490/2019

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 pension @20% rounded off to 50% with effect from the date of retirement of the applicant; along with all consequential benefits.

2. The applicant was enrolled in the Indian Air Force on 18.08.1978 and retired on 30.06.2016. The Release Medical Board dated 12.08.2015 held that the applicant was fit to be discharged from service in low medical category A4G4(T-24) for the disability – Type II DIABETES MELLITUS @ 20% for life 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). The second disability i.e. Dyslipidemia @ 1-5% for life does not fulfill the requisite of 20%, it does not warrant any consideration.

3. The claim of the applicant for grant of disability pension was rejected vide letter No. Air HQ/99798/1/636066/06/16/DAV(DP/RMB) dated 25.01.2016 stating that the aforesaid disability was considered as neither attributable to nor aggravated by military service. Subsequently, he sent a legal notice-cum-representation/Appeal dated 30.06.2019, however, the same has been rejected by the respondents vide their letter No. Air HQ/99798/1/636066/DAV/DP/CC dated 01.08.2019.

4. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36],*** Ld. 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 Air Force 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 military service.

5. Per Contra, learned counsel for the respondents submits that under the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), the primary condition for grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Air Force service and is assessed @ 20% or more.

6. 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 Air Force service and not connected with the Air Force service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

7. 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 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I). The only question that arises in the above backdrop is whether disabilities suffered he applicant was attributable to or aggravated by Air Force service.

8. 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 commission into the Military Service.

9. 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.

10. 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).

11. 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, be presumed to have been attributable to or aggravated by air force service.

12. Therefore, in view of our analysis, the OA is allowed and Respondents are directed to grant benefit of disability pension @ 20% for life rounded off to 50% in view of judgement of Hon'ble Apex Court in ***Union of India versus Ram Avtar (supra)*** from the date of his discharge i.e. 30.06.2016. The arrears shall, however, be restricted to three years prior to the filing the OA, i.e., 20.08.2019 payable to the applicant within four months of the receipt of a copy of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

13. Consequently, the OA 1490/2019 is allowed.

14. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Vide our detailed order of even date, we have allowed the main OA No.1490/2019. Faced with this situation, learned counsel for the respondents makes an oral prayer for grant of leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the respondents and going through our order, 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, therefore prayer for grant of leave to appeal stands dismissed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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