

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

42.

OA 646/2023 with MA 5264/2023 & 933/2023

Ex Sub Ayyub Ali Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Ved Prakash, Advocate with
Mr. Devendra Kumar, Advocate
For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
06.05.2024

MA 5264/2023

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.

MA stands disposed of.

MA 933/2023

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.

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) *Quash the Impugned Order No. PEN GP/JC-804565K/DP/45 dated 26.09.2018.*
- (b) *Direct the respondents to grant disability element of pension to the applicant duly round off to 50% w.e.f his date of discharge.*
- (c) *Direct the respondents to produce all medical documents before the Hon'ble Court.*
- (d) *Direct the Respondents to pay the due arrears of disability element of Pension with interest @ 12% p.a from the date of retirement with all the consequential benefits.*
- (e) *Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.*

2. Even though the applicant is found to be suffering from the following two ailments viz, (i) Primary Hypertension and (ii) DM Type-II and the composite disability for the two ailments have been assessed at 40%.

3. During the course of hearing today, learned counsel for the applicant made a fair statement that for the present in this application, the applicant would only be praying for disability pension pertaining to one ailment i.e. Primary Hypertension and he gives up his claim for other ailment. The applicant submits that for the purpose of Primary Hypertension, the disability has been assessed @ 30% as is evident from the medical records.

4. 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%.

5. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 30% rounded off to 50% ^{for life} 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.

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. No order as to costs.

8. Pending miscellaneous application, if any, stands disposed of.

9. All other claims stand rejected.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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