

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

A.

OA 360/2019 WITH MA 904/2019

Cdr Trilochan Singh Bhatia (Retd.)		Applicant
Versus		
Union of India & Ors.		Respondents

For Applicant	:	Mr. Shakti Chand Jaidwal, Advocate
For Respondents	:	Mr. Shyam Narayan, Advocate

CORAM

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

ORDER
22.04.2024

Vide our orders of even date, we have allowed the OA. Faced with the situation, learned counsel for the respondents makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007, to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

Ps

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ORDER

MA 904/2019

Keeping in view the averments made in this application seeking condonation of delay in filing the OA and finding the same to be bonafide, 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 OA. MA stands disposed of.

OA 360/20119

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

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

2. The applicant was commissioned in the Indian Navy on 01.07.1981 and retired on 30.11.2011. The Release Medical Board dated 17.08.2011 held that the applicant was fit to be discharged from service in low medical category S2A2(P&A) pmt for the disability -DIABETES MELLITUS Type II @ 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). 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. Diabetes Mellitus Type-II and he gives up his claim for other ailment i.e. Frature both bones.

3. The claim of the applicant for grant of disability pension was rejected vide IHQ MoD(N)/DPA letter PN/6906/DP/11 dated 08.11.2011 stating that the aforesaid

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disability was considered as neither attributable to nor aggravated by military service. Subsequently, the applicant filed an application for first appeal dated 14 Jan 2019 for grant of disability pension after around eight years of disposing off initial claim. NHQ vide its letter No. PN/6906/DP/11 dated 05 Feb 19 rejected the first appeal stating that the time limit of five years has already elapsed. Therefore, the Competent Authority rejected the first appeal.

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 submitted 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 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 military service.

5. Per contra, the learned counsel for the respondents submits that the sanction of disability pension in case of the disability at the time of discharge from service is based on

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fulfillment of essential conditions as laid down under Rule 105-B of Navy (Pension) Regulations, 1964 wherein the disability should be either attributable to or aggravated by the Naval service and the minimum assessment for disabilities mandatorily is required to be 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 Navy Service and not connected with the Naval 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 view 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 Rule 105-B of Navy (Pension) Regulations, 1964. The only question that arises is whether disability suffered by the applicant was attributable to or aggravated by military service.

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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 the disability DIABETES MELLITUS Type II for life rounded off to 50% for life in view of judgment of Hon'ble Apex Court in Union of India versus Ram Avtar (supra) from the date of his discharge i.e. 30.11.2011. The arrears shall, however, be restricted to three years prior to the filing the OA, i.e.,

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28.02.2019 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. No order as to costs.

14. Pronounced in open Court on this the 22 day of April 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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