

COURT No. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1250/2017 WITH MA No. 4442/2023

Maj G S Khanna (Retd) Applicant
Versus
Union of India and Ors. Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. K.K. Tyagi, Sr. CGSC

CORAM

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

ORDER

MA 4442/2023

The applicant filed the present MA under Rule 25 of the Armed Forces Tribunal (Procedure) Rules 2008, praying this Court to adjudicate upon all prayers simultaneously in the present OA except clause (v) of the prayer. The tribunal vide order dated 04.12.2023 disposed of this MA and stated that OA 1250/2017 shall be adjudicated only in relation to prayer clause (i) to (iv) and (vi) and in relation to prayer clause (v), it is open to the applicants to seek redressal by filing a separate OA. The relevant paras are extracted below:

“At the outset it is submitted on behalf of the applicant that the prayer at Serial No. (v) of the prayer clause-8 is sought to be adjudicated vide a separate OA and that MA 4442/2023 had been filed in relation thereto. On behalf of the respondents, there is no

opposition on behalf of the respondents to the prayer made in MA 4442/2023. MA 4442/2023 is disposed of accordingly. In view thereof the OA 1250/2017 shall be adjudicated only in relation to prayer clause (i) to (iv) and (vi) and in relation to prayer clause- (v) which reads to the effect:-

"(v) To grant the Applicant Pension of the Rank of Lt Col with effect from 01-01-1996 with an interest of 18% there on."

It is open to the applicant to seek redressal by filing a separate OA which if filed would be dealt with in accordance with law."

O.A. 1250/2017

2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying for the followings:

(i) To call for the records of all the Medical Board Proceedings for your Lordships' perusal.

(ii) to set aside the orders of the MOD issued vide their letter number 2 (41)/82/Pen-C dated 25 July 1983 Annexure A1.

(iii) To direct the Respondents to pay the Applicant the disability pension at the rate of 75% for life after broad banding in view of Hon'ble Supreme Court Judgement in Union of India versus Ram Avtar Civil Appeal No 418/2012 dated 10. 12. 2014.

(iv) To direct the Respondents to pay the Arrears of disability pension with 18% interest with effect from the next day of release of the Applicant.

(v) To grant the Applicant Pension of the Rank of Lt Col with effect from 01-01-1996 with an interest of 18% there on.

(vi) To grant any other relief as the Hon'ble members of the Tribunal may deem appropriate.

Herein, OA 1250/2017 shall be adjudicated only in relation to

prayer clause (i) to (iv) and (vi) in accordance with the order dated 04.12.2023 of this Tribunal.

3. The applicant was commissioned in the Indian Army on 14.12.1958 and was invalided out from service on 23.03.1982. The Release Medical board conducted at Command Hospital (Central Command) Lucknow on 30.01.1982 assessed his disability Aphakia with Bullous Keratopathy (Rt) and Aphakia Lt Eye @ 60% attributable to military service and declared him permanently unfit for military service due to which he was invalidated out of service.

4. The Counsel for the applicant stated that since the medical board declared the disability as attributable to service the applicant is eligible for disability pension. Further, the 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 Army 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 service.

5. Per contra, the counsel for the respondents stated that the

applicant had applied for disability pension, which was rejected vide letter dated 25.07.1983. Subsequently, the counsel stated that the applicant did not file any appeal, and only now, after a lapse of 35 years, has approached this Tribunal for the grant of disability pension. Hence, the OA should be dismissed on the ground of delay alone.

6. During the course of the proceedings, it was submitted by the respondents that the medical documents pertaining to the case have been destroyed. However, on the careful perusal of the material available on record including the letter dated 21.05.1982 addressed to Central Command FS Section, Lucknow by Command Hospital, Central Command, Lucknow (Annexure A-2 of the OA), Discharge Slip dated 02.02.1982 (Annexure A-8 of the Additional Affidavit), Physically Handicapped Certificate dated 19.09.1983 (Annexure A-9 of the Additional Affidavit) and also the submissions made on behalf of the parties, we find that it is not in dispute that the applicant was invalidated out of service on 23.03.1982 due the disability Aphakia with Bullous Keratopathy(Rt) and Aphakia Lt Eye @ 60% which was held attributable to military service.

7. 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 Vs. Union of India* (supra), wherein it is clearly spelt out that any disease contracted during service is presumed to be attributable to military service, even if there is no record of any ailment at the time of enrollment into the military Service. And in this case it is clearly stated that the disability is attributable to military service.

8. Regarding broadbanding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in *Union of India Vs. 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).

9. Therefore, in view of our analysis, the OA is allowed and the respondents are directed to grant benefit of disability element of pension @60% for the disability of

Aphakia with Bullous Keratopathy (Rt) and Aphakia Lt Eye @ 60% for life rounded off to 75% for life in view of judgement of Hon'ble Apex Court in Union of India Vs. Ram Avtar (supra) from the date of invalidment i.e. 23.03.1982. However, the arrears will be restricted to three years from the date of filing of this OA keeping with the law laid down in the case of Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649]. 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.

10. Consequently, the OA 1250/2017 is allowed.

11. Pending miscellaneous application, if any stands closed.

12. No order as to costs.

Pronounced in the open Court on ^{HM} 5 day of December, 2024.


(JUSTICE RAJENDRA MENON)
CHAIRPERSON


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

Akc/Ps

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