

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

OA 155/2017  
with  
MA 138/2017

Hav Tarakeshwar Kant Prasad ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Ms. Archana Ramesh, 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

MA 138/2017

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the MA is allowed condoning the delay in filing the OA.

OA 155/2017

2. Invoking the jurisdiction under Section 14 of the Armed Forces Tribunal Act, 2007, the instant OA has been filed praying for the following reliefs:

*“(a) Issue directions to the Respondents to modify the ADGPS, Army HQ Letter dated 08 May 2012 placed as Annexure A-1 by declaring the ‘Primary Hypertension’*

*either as attributable or aggravated to military service in the light of the Hon'ble Supreme Court landmark Judgment in Re Dharamvir Singh Vs Union of India which is reflected in the Judgments of the Hon'ble Armed Forces Tribunal in OA No 132/2014 in Re Major CM Mangain Vs Union of India dated 23 Apr 2015 as also in OA No 243/2014 in Re Naib Subedar Dharamvir Singh Vs Union of India dated 06 May 2015 placed herein as Annexure A-7 (Colly);*

*(b) Issue directions to the Respondents to hold a Re Survey Medical Board to include the re assessment for the three disabilities of 'Fracture Base of V and VI Metatarsal Right Foot, Sciatica (PIVD) - Prolapsed Inter Vertebrate Disc Right and Left Ankle' duly quantified and grant fresh Disability Pension covering all the disabilities duly broad banded in the rank of ACP Naib Subedar to meet the ends of equity, justice and fair play;*

*(c) Issue directions to the Respondents to grant Army Group Insurance Fund proportionately to the Disability Pension percentage in the light of the Hon'ble Punjab and Haryana High Court Judgment in Re Paramjit Singh Versus Union of India dated 12 Feb 2008 which has been upheld by the Hon'ble Supreme Court vide Order dated 04 April 2011 placed as Annexure A - 8 (Colly);*

*(d) Issue directions to the Respondents to grant LPG Agency to the Applicant as the Disability Pension is quantified more than 20% as per the rules of the subject placed as Annexure A - 9;*

*(e) Pass such other and further orders/directions to the Respondents in the attendant genuine circumstances of the case to meet the ends of justice."*

3. The applicant was enrolled in the Army Ordnance Corps on 24.03.1987 and discharged on 31.03.2011 on completion of 24 years of military service. The Release Medical Board dated 10.03.2011 held that the applicant was fit to be discharged from service in composite low medical category

S1H1A3 (P) P3 (P) E1 for the disabilities- (a) Medial Meniscus Tear (Left) @ 20% for life, (b) Cervical Spondylosis @ 20% for life, (c) Primary Hypertension @ 30% for life and (d) Obesity assessed as NIL. However, he was only given disability pension for the disability (b), i.e., Cervical Spondylosis @ 20% for life and remaining disabilities were assessed as neither attributable to nor aggravated by military service.

4. The initial claim for disability pension of the applicant was adjudicated by the OIC Records on 22.07.2011 and the competent authority concluded that out of four disabilities as mentioned hereinabove, only disability (b), i.e., Cervical Spondylosis was considered as aggravated by military service with net degree of disability at 20% for life and remaining three disabilities, i.e., (a) Medial Meniscus Tear (Left), (c) Primary Hypertension and (d) Obesity were considered as neither attributable to nor aggravated by military service (NANA) with the findings of the RMB. Aggrieved by the same, the applicant submitted an appeal dated 12.09.2011 for Re-survey Medical Board. The Army Ordnance Corps Records vide their letter dated 05.12.2011 processed the case to IHQs of MoD (Army) and the IHQs of MoD (Army) vide their letter dated 08.05.2012 intimated that they have considered

the applicant's appeal dated 12.09.2011 and under relevant rules and regulations, accepted that the disability (a), i.e., Medical Meniscus Tear (Left) was also aggravated by the military service with net degree of disability at 20% for life with the composite disability assessment @ 40% for life. Consequently, the claim of the applicant for disability pension was again processed to PCDA (P), Allahabad by AOC Records vide their letter dated 25.05.2012 and thereafter, PCDA (P), Allahabad granted disability pension for the disability, i.e., (b) Cervical Spondylosis @ 20% for life w.e.f. 01.04.2011 and IHQs of MoD examined his 1<sup>st</sup> Appeal dated 12.09.2011 and accepted the disability (a) Medical Meniscus Tear (Left) @ 20% for life and rejected other remaining disabilities, i.e., (c) Primary Hypertension and (d) Obesity and the applicant was granted composite disability pension @ 40% for life.

5. Placing reliance on the judgement of the Hon'ble Supreme Court in Dharamvir Singh Vs. UOI & Ors [2013 (7) SCC 36], learned counsel for the 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 military service.

6. Per Contra, learned counsel for the respondents submits that under the provisions of Regulation 53(a) of the Pension Regulations for the Army, 2008, (Part-I), "an individual released/retired/discharged on completion of terms of engagement or on completion of service limits or an attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/dischARGE, if the accepted degree of disability is assessed at 20 percent or more".

7. Relying on the aforesaid provision, learned counsel for the respondents further submits that the disability of Primary Hypertension of the applicant was assessed as "neither attributable to nor aggravated" by military service and not connected with the military service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

8. 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, i.e., (c) Primary Hypertension was assessed to be above 20% which is the bare minimum for grant of disability pension in terms of Regulation 53(a) of the Pension Regulations for the Army, 2008, (Part-I).

9. It is pertinent to note that at the time of the RMB, the applicant is grossly overweight, with an actual weight of 85 Kg as against an ideal weight of 61.5 Kg. We cannot ignore the fact that the applicant was overweight thus bringing us to the conclusion that the Primary Hypertension is attributable to his being overweight rather than the stress and strain of service, as asserted by the applicant. Therefore, we hold that the organization cannot be held liable for the applicant's personal health choices and actions.

10. We cannot shy away from the fact, that the disability, i.e., Primary Hypertension is due to interplay of metabolic and lifestyle factors and failure in maintaining the ideal body weight which can be managed by regular exercise and restricting diet, and the fact that the applicant being overweight signifies that he has remained obese over a period of time, thereby, himself inviting the disabilities, and in such a case, it would be grossly unjustified for us to ignore the aforesaid facts.

11. Applying the above parameters to the case at hand, we are of the view with respect to disability of Primary Hypertension, there is no denial from the fact that if the claimant is himself not responsible enough to control the factors which are well within his voluntary control, he cannot be allowed to garner benefit of such beneficial schemes and provisions. Therefore, the applicant is not entitled for disability pension for the disability of Primary Hypertension.

12. Regarding broad-banding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in the case of 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 18.04.2016 has issued instructions for implementation of the Hon'ble Supreme Court's order in the case of Ram Avtar (supra).

13. Noting that the applicant is already in receipt of disability pension @ 50% for life, we have arrived at the conclusion that the applicant is not entitled to any additional relief.

14. Therefore, in view of our analysis, this OA dismissed being devoid of merit.

15. No order as to costs.

16. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this <sup>M</sup>5 day of December, 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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