

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

56.

OA 1694/2023 with MA 2475/2023

MWO (HFO) Prasadha Narayan Rai (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Ramniwas Bansal, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate

CORAM

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

ORDER
02.09.2024

MA 2475/2023

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 same is allowed condoning the delay in filing the O.A.

OA 1694/2023

2. 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) To quash and set aside the Applicant's RMB proceedings to the extent the order denies grant of Disability element of Pension to the Applicant.

(b) To set aside the impugned order dated 18 Feb 2022 and direct the respondents to grant the disability element of pension @ 40% broad-banded to 50% along with all consequential benefits, with arrears and interest @12% p.a. w.e.f. date of discharge, by treating disease as attributable to and aggravated by military service, in view of the Hon'ble Apex Court Judgment in Rajbir Singh (Supra) & Dharamvir Singh (Supra), or.

(c) To pass such orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."

3. In this case, the applicant was enrolled in Indian Air Force on 24th November, 1982 and on completion of service was discharged on 31st December, 2021. The applicant is found to be suffering from the two ailments viz. (i) Primary Hypertension and (ii) Diabetes Mellitus- Type II, and the Release Medical Board dated 22nd March, 2021 held his disability (a) Primary Hypertension @ 30% or life and (b) Diabetes Mellitus Type II @ 20% for life, the composite assessment of disability for the two ailments have been assessed at 40% for life. 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 pressing for disability element of pension pertaining to one ailment i.e., Primary Hypertension and he gives up his claim for the other ailment.

4. The applicant submits that for the purpose of Primary Hypertension, the disability has been assessed @ 30% for life as is evident from the medical records.

5. 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% for life.

6. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 30% for life rounded off to 50% for life with effect from the date of his discharge. All other claims stand rejected.

7. The respondents are directed to grant disability element of pension to the applicant @ 30% for life for the disability of primary hypertension which be rounded off to 50% for life from the date of retirement 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.

8. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant. The arrears shall be disbursed to the applicant within four months from the date of receipt of a copy of this order, failing which, these shall carry interest @ 6% per annum till the date of payment.

9. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

Priya