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

55. C

OA 1701/2023 with MA 2506/2023 & MA 519/2024

Hav Jawan Singh (Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. U S Maurya, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate

CORAM

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

ORDER

MA 2506/2023

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.

MA stands disposed of.

OA 1701/2023 with MA 519/2024

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) Direct Respondents to grant Disability Element w.e.f. 31.12.2019 (from next date of discharge) after rounding of from 30% to 50% as per (Annexure A-II (Colly) for Primary Hypertension; with 12% interest as applicant's disease originated first time after 26 years of service in Armed Forces and respondents denied for grant of Disability element only on the ground of disability PRIMARY HYPERTENSION occur in Peace Station & Neither Attributable Nor Aggravated (NANA). The question involved in this case on the matter of Primary Hypertension, Neither Attributable Nor Aggravated (NANA) and PEACE STATION is no longer res integra, as the same had already been settled by this Hon'ble Tribunal in the cases of Sgt Surendra Pal (Retd.) vs. Union of India & Ors OA 2249/2022 order dated 31.05.2023 by Hon'ble AFT (PB) New Delhi. Sgt Dharmendra Kumar Jha Vs. UOI & Ors. (OA 360/2013 order dated 20.08.2014 by Hon'ble AFT (PB) New Delhi and vide page No. 26 of Raksha Mantri's Committee of Experts-2015 (Annexure A-7 Colly). On the matter of disease neither attributable to nor aggravated by military service by the Hon'ble Supreme Court in the case of Dharamvir Singh Vs. Union of India & Ors. (Civil Appeal No. 4949 of 2013 judgment dated 02.07.2013), Union of India Vs. Rajbir Singh (Civil Appeal No. 2904 of 2011) judgment on 13.02.2015 along with the 26 connected appeals) (Annexure A-II). Union of India & Ors. Vs. Angad Singh Titaria (Civil Appeal No. 11208 of 2011 judgment on 24.02.2015) and latest judgment Ex. Gnr. Laxmanram Poonia (Dead) Through Lrs. Vs. Union of India and Ors. (Civil Appeal No. 2633 of 2017 judgment dated 22.02.2017). On the matter of 14 days charter

duties applicant case is squarely covered and has no relevancy to reject Disability Pension by the Hon'ble as adjudicated in para 11 of the case Jyotsana Bhatnagar Vs. UOI & Ors. (OA No. 799/2016 order datd 05.04.2017 passed by Hon'ble AFT (PB) New Delhi (Annexure A-8).

(b) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

(c) Award cost of the OA to the applicant

2. In this case, the applicant was enrolled in **Indian Army** on **28.12.1993** and on completion of service was discharged on **31.12.2019**. The Release Medical Board held on 12.09.2019 assessed his disabilities (i) Primary Hypertension @ 30% for life and (ii) Fracture Tibial plateau (Rt.) @ 30% for life, the composite assessment of disability for the two ailments have been assessed at 51% for life. Even though the applicant is found to be suffering from the following two ailments viz. (i) Primary Hypertension and (ii) Fracture Tibial plateau (Rt.)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 all other ailments.

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

3. 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.

4. 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. All other claims stand rejected.

5. 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. However, the arrears will be restricted to three years from the date of filing of this OA in keeping with the law laid down in the case of ***Tarsem Singh(supra).***

6. 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.

7. No order as to costs.

Pronounced in the open court on this day of 30 May 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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