

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

86.

OA 1739/2023 with MA 1946/2024 & 2548/2023

Ex WO Gauranga Majumdar ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Praveen Kumar, Advocate  
For Respondents : Mr. R S Chhillar, Advocate

CORAM

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

ORDER  
03.07.2024

MA 2548/2023

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.

MA 1946/2024

Counter affidavit has been filed. There being some delay in filing the counter affidavit, this application has been filed seeking

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condonation of delay. Delay condoned. Counter affidavit is taken on record.

MA stands disposed of.

OA 1739/2023

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the instant OA has been filed, praying for the grant of a disability pension to the applicant for disabilities assessed at 40% (composite).

2. The factual matrix of the case is that the applicant was commissioned in the Indian Air Force on 10.06.1986 and discharged on 31.12.2021 upon attaining the age of superannuation, after rendering 35 years, 6 months, and 20 days of regular service. During the Release Medical Board conducted prior to his discharge, he was found to be suffering from disabilities: (i) Primary Hypertension @ 30% for life and (ii) Pre-Diabetes (old) @ 19% for life, with a composite assessment of both disabilities at 40%. His medical category was permanently downgraded to A4G3(P), and his disabilities were determined to be neither attributable to nor aggravated by military service (NANA).

3. The initial claim of the applicant for the disability pension was rejected by the Competent Authority, and this was

communicated to the applicant vide Letter No. Air HQ/99798/1/706903/12/21/DAV (DP/RMB) dated 08.03.2022, with an option to prefer an appeal within six months from the date of receipt of the letter if he was not satisfied with the decision. Against the said decision, the applicant filed a first appeal on 07.11.2022, which was rejected vide letter dated 11.09.2023. Hence, the instant O.A.

4. The learned counsel for the applicant contends that the applicant suffered the disability due to prolonged and constant severe stress and strain of military service and should be treated as attributable to/aggravated by military service. It was further stated that the applicant had served at many places with different climates and geographic conditions, which also affected his health.

5. Placing reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh v. Union of India and others* (2013) 7 SCC 36, the learned counsel for the applicant argues that no note of any disability was recorded in the applicant's service documents at the time of entry into service. Furthermore, the applicant served in the Air Force at various locations under different environmental and service conditions throughout his prolonged service. Therefore, any disability that arose during his service is deemed to be attributable to or aggravated by military service. The learned

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counsel argues that the applicant's obesity has no bearing on the onset of his disabilities. Weight is a factor that fluctuates over time and can increase or decrease, thus having no significant impact on the disability of hypertension

6. On the other hand, the learned counsel for the respondents submits that under the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on account of a disability that is attributable to or aggravated by Air Force service and assessed at 20% or more. Relying on this provision, the learned counsel for the respondents further submits that the applicant's disabilities were assessed as "neither attributable to nor aggravated by" Air Force service as they were not connected with the Air Force service. Consequently, his claim was rejected, and the applicant is not entitled to the grant of disability pension due to policy constraints.

7. The learned counsel further argues that the applicant was found to be overweight during his service extension medical examination, weighing 72 kg at that time and an occasional smoker and thus advised to reduce weight through regular exercise and dietary control. Despite these recommendations, he remained overweight until his discharge from service. He was repeatedly

advised to reduce weight through regular exercise and dietary control. At the time of detection of his disabilities, he was weighing 77 kg. Therefore, the disabilities cannot be considered attributable to or aggravated by service, as the applicant is solely responsible for his unreasonable weight gain in violation of the service requirements to maintain physical fitness at all times.

8. Upon careful consideration of the materials available on record and the submissions made on behalf of the parties, we are of the opinion that it is undisputed that the extent of the applicant's disability (ii) Pre-diabetes (old), was assessed to be less than 20%, which is the minimum requirement for the grant of a disability pension in terms of Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I). Therefore, this does not warrant our interference. The only question that now arises is whether the disability (i) i.e., Primary Hypertension, suffered by the applicant, was attributable to or aggravated by military service.

9. The Release Medical Board (RMB) found the applicant fit to be released from service in a low medical category A4G3 (Permanent) for the disabilities, namely Primary Hypertension and Pre-diabetes. According to the RMB, Primary Hypertension is constitutional/idiopathic in nature and is due to lifestyle factors such as dietary indiscretion and lack of exercise. The onset occurred

in a peace area without any exposure to High Altitude Area (HAA), Field, or Counter Insurgency (CI) Operations areas, and there was no delay in diagnosis or treatment. Therefore, the RMB considered the disease to be neither attributable to nor aggravated by military service, as per Para 43 of GMO Military Pension (Amendment) 2008

10. We find that the applicant was found to be overweight at the time of detection of his disabilities when he weighed 77 kg (IBW-64 kg, BMI-27.6 kg/m<sup>2</sup>). We observe that his weight was not reduced, clearly indicating that the onset of his disability is the result of the applicant being alarmingly overweight. Therefore, the argument that the applicant suffered the disability due to the stress and strain of service is wholly unfounded, as the organization cannot be held liable for the applicant's own actions.

11. We cannot shy away from the fact that the disability - Primary Hypertension (PHT) - is due to the interplay of metabolic and lifestyle factors, including the failure to maintain an ideal body weight, which can be managed by regular exercise and dietary restrictions. The applicant's alarming overweight condition signifies that he has remained obese over a period of time, thereby inviting the disability upon himself. In such a case, it would be grossly unjustified for us to ignore these facts.

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12. Applying the above parameters to the case at hand, we hold that with respect to disabilities such as Primary Hypertension and Pre-Diabetes, if the applicant does not responsibly manage the factors within their voluntary control, he should not be allowed to benefit from such advantageous schemes and provisions.
13. Therefore, the O.A is devoid of merit and is dismissed.
14. No order as to costs.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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