

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

91.

OA 1841/2023 WITH MA 1376/2024

JWO Brijmohan Saxena (Retd)

... Applicant

Versus

Union of India and Ors.

... Respondents

For Applicant

: Mr. Raj Kumar, Advocate

For Respondents

: Mr. Prabodh Kumar, Advocate

CORAM

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

ORDER  
09.07.2024

MA 1376/2024

Counter affidavit has been filed. There being some delay in filing the counter affidavit, this application has been filed seeking condonation of delay. Delay condoned. Counter affidavit is taken on record.

2. MA stands disposed of.

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3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this

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OA praying to direct the respondents to accept the disabilities of the applicant as attributable to/aggravated by military service and grant disability element of pension @50% rounded off to @75% with effect from the date of discharge of the applicant; along with all consequential benefits.

4. The applicant was enrolled in The Indian Air Force on 02.07.1987 and was discharged from service on attaining superannuation on 31.07.2022 after serving for 35 years, and 29 days. The Release Medical Board dated 30.09.2021 held that the applicant was fit to be discharged from service in low medical category A4G3(P) for the disabilities- (i) PRIMARY HYPERTENSION @30% (ii) Dyslipidemia @05% (iii) MVP With Mitral Regurgitation 30% being neither attributable to nor aggravated (NANA) by Air Force Service.

5. The claim of the applicant for grant of disability pension was rejected vide letter No. Air HQ/99798/1/725204/07/22/DAV(DP/RMB) dated 18.10.2022 stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service (NANA). Aggrieved by the aforesaid rejection, the

applicant has approached this Tribunal.

6. 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 Air Force 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.

7. Per Contra, 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 which is attributable to or aggravated by Air Force service and is assessed @ 20% or more.

8. Relying on the aforesaid provision, learned counsel for the respondents further submits that the aforesaid disabilities of the applicant were assessed as "neither attributable to nor

aggravated" by Air Force service and not connected with the Air Force service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

9. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the extent of disability was assessed to be 20% which is the bare minimum for grant of disability pension in terms of Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I). Since the second disability i.e. dyslipidemia is assessed @5% which is less than minimum 20% and has no causal connection to service, the benefits of the same cannot be granted. The only question that arises in the above backdrop is whether disabilities (i) and (iii) suffered by the applicant are attributable to or aggravated by military service.

10. 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, if there is no record of any ailment at the time of commission into the Military Service.

11. 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/Lega.) 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).

12. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of medical disease/disability, the disability must be presumed to have arisen in the course of service which must, in the absence of any

reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by air force service.

13. Therefore, in view of our analysis, the OA is allowed and Respondents are directed to grant benefit of disability element of pension for (i) PRIMARY HYPERTENSION @30% and (iii) MVP with Mitral Regurgitation @30% for life, compositely assessed to be more than 50% and therefore rounded off to 75% in view of judgement of Hon'ble Apex Court in Union of India Vs Ram Avtar (supra) from the date of discharge i.e. 31.07.2022. 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.

14. Consequently, the OA 1841/2023 is allowed.

15. No order as to costs.

  
(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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

AkcN

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