

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

OA 2069/2023 WITH MA 2998/2023

Sep Arun Kumar (Retd.) ... Applicant  
Versus  
Union of India and Ors. ... Respondents

For Applicant : Mr. N.K. Mishra, Advocate  
For Respondents : Ms. Theepa Murugesan, Advocate

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA praying to direct the respondents to accept the disability of the applicant as attributable to and/or aggravated by military service and grant disability element of pension @30% rounded off to 50% with effect from the date of retirement of the applicant; along with all consequential benefits.

2. The applicant was enrolled in the Indian Army on 09.05.2003 and retired on 31.05.2022. The Release Medical Board dated 28.03.2022 held that the applicant was fit to be released from service in composite low medical

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category for the disability of Primary Hypertension @30% for life while the qualifying element for disability pension was recorded Nil for life on account of disability being treated neither attributable to nor aggravated by military service (NANA).

3. 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.

4. 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 on 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”.

5. Relying on the aforesaid provision, learned counsel for the respondents further submits that the aforesaid disability 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.

6. 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 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).

7. It is pertinent to note that at the time of the onset of the disease, the applicant was overweight, with an actual weight of 80 kgs as against an ideal weight of 69 kgs. We have taken

note of the fact that the weight of the applicant was within permissible limit at the time of RMB at 74 Kgs. However, even if that is so, we cannot ignore the fact that the applicant was overweight at the time of onset of the disability 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.

8. 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 the applicant has remained obese over a period of time, thereby, himself inviting the disability, and in such a case, it would be grossly unjustified for us to ignore the aforesaid facts.

9. Applying the above parameters to the case at hand, we are of the view with respect to disability, i.e., 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.

10. Therefore, in view of our analysis, the OA is liable to be dismissed both on the ground of merit and delay.

11. Consequently, the OA 2069/2023 and MA 2998/2023 is dismissed.

12. No order as to costs.

13. Pending miscellaneous application, if any, stands closed.

Pronounced in the open Court on 2 day of August, 2024.

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(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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

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