

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

169.

OA 2324/2019 with MA 3220/2019

Ex MCA(AH) II/Hon Sub

Lt Santosh Singh

.....

Applicant

Versus

Union of India & Ors.

.....

Respondents

For Applicant

:

Mr. Shakti Chand Jaidwal, Advocate

For Respondents

:

Dr. Vijendra Singh Mahndiyani, Advocate

CORAM

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

ORDER
18.03.2024

MA 3220/2019

This is an application filed under Section 22 of The Armed Forces Tribunal Act, 2007 seeking condonation of delay of 3225 days in filing the present OA which is allowed for the reasons stated in the application despite opposition on behalf of the respondents. The MA is disposed off accordingly.

OA 2324/2019

2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to accept the disability DILATED CARDIOMYOPATHY ICD NO. I 42.0 of the applicant as aggravated by stress and strain of service and grant disability element of pension @40% rounded off to 50% for life with

effect from the date of retirement of the applicant; along with all consequential benefits.

3. The applicant was enrolled in the Indian Navy on 13.01.1972 and retired on 30.06.2005 after serving for 33 years 05 months and 19 days of qualifying service. The applicant in the year 2001 while posted at INS Angre/HQ WNC (Mumbai) suffered from a disability DILATED CARDIOMYOPATHY ICD NO. I 42.0 and a Cardiac Resynchronization Therapy Pacemaker was permanently implanted in chest of the applicant. The Release Medical Examination dated 28.02.2005 at INS Angre (Mumbai) held that the applicant suffered from a medical disability "DILATED CARDIOMYOPATHY ICD NO. I 42.0" assessed @40% for life as aggravated by military service due to stress & strain of service and to be discharged from service in low medical category S3A2(P).

4. The initial claim of the applicant for grant of disability pension was rejected and the same communicated to the applicant vide Naval Pension Office letter No DP/D/LRDO/097628H dated 18.11.2005 with an advice to prefer an Appeal/representation against the decision within six months from the rejection. The applicant preferred first appeal dated 21.02.2006 for grant of disability pension for the said disability which was rejected and same was communicated to the applicant vide IHQ/MoD (Navy) letter No PN/0134/DP/299/06

dated 26.11.2008 stating to the effect that the applicant is not entitled to Disability Pension in terms of Regulation 101 of Navy (Pension) Regulations, 1964, since the disability as viz Dilated Cardiomyopathy recorded in RMB is neither attributable to nor aggravated by Military service and he was advised to prefer a second and final appeal to the Defence Minister's Appellate Committee within twelve months from the date of receipt of the letter.

5. The applicant preferred second and final appeal dated 27.07.2009 in consequence of which the applicant was subjected to second Appeal Medical Board in April 2010 at Base Hospital, Delhi Cantonment. The second appeal was also rejected and communicated to the applicant vide Govt of India, Min of Def letter No 1(268)2009/D(Pen/Appeal) dated 17.08.2010 stating to the effect that the disability was assessed as 'NANA'.

Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

6. Placing reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]*, Learned Counsel for 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 Indian Navy 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 Naval service.

7. Learned Counsel for the applicant submits that the applicant is an Aircraft Handler and performed throughout his service of more than three decades in different types of Air Traffic Controlling and Handling Duties at various Naval Airfields as well as onboard ships including Aircraft carriers in a most stressful condition than the civil aircraft controlling.

8. The Learned Counsel of the applicant relies on the order dated 01.08.2018 passed by this Tribunal granting disability pension in case of *Ex-Sgt Kamlesh Kumar Jha Vs UOI & Ors (OA No 254/2016)* wherein, the applicant was denied disability pension on account of "CARDIOMYOPATHY" detected in peace station.

9. The Learned Counsel of the applicant also argues that the findings of the Appeal Medical Board (AMB) assessing disability of the applicant as NANA are against the judgment dated 02.05.2012 passed by the *Regional Bench, Chandigarh* of this Tribunal in case of *Brig Ram Chander Malik Vs UOI & Ors (OA No 1824/2011)* wherein it held that AMB has no power to go into attributability/aggravation of the disability and *Hon'ble Supreme Court* vide order dated 10.12.2014 in case of *UOI & Ors Vs Brig Ram Chander Malik (Civil Appeal No 659/2014)* dismissed the appeal filed by the UOI against the aforesaid judgment.

10. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Regulation 101 and 105B of Navy Pension Regulation 1964, the primary condition for the grant of disability pension which is attributable to or aggravated by Naval Service and is assessed @ 20% or more.

11. Relying on the aforesaid provision, Learned Counsel for respondents further submits that the aforesaid disabilities of the applicant were assessed as "neither attributable to nor aggravated" by Naval service and not connected with the naval service, Learned Counsel also submits that in the instant case the Appeal Medical Board has assessed his disability @30% as neither attributable to nor aggravated by service, thus, the applicant is not entitled for grant of disability pension due to policy constraints.

12. 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 disabilities was assessed to be above 20% which is the bare minimum for grant of disability pension in terms of Regulation 101 and 105B of the Pension Regulations for the Navy Pension Regulation 1964. Since, Now, the only question that arises in the above backdrop is whether the first Release Medical Board dated 28.05.2005 assessing the disability suffered by the applicant aggravated by service due to stress and strain condition is correct or the Appeal Medical Board

(AMB) dated 21.01.2010 assessing the disability as neither attributable to nor aggravated by service and reducing the percentage of the disability @30%?

13. 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 v. 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 enrollment into the military Service and on scrutiny of Release Medical Board dated 28.02.2005 by INS Angre and AMB dated 21.01.2010 conducted by Base Hospital, Delhi Cantt-10 that at the time of both Medical Board, the applicant was within the permissible weight limit.

14. As far as issue pertaining to conduct of Appeal Medical Board is concerned, we find that the Appeal Medical Board has no authority to sit over appeal to a RMB that has been duly conducted on the aspect of attributability to and aggravation by military service of the disability. It is pertinent to observe that Annual Medical Board by holding the disability to be NANA has acted without observing due process of law and in view of the ratio laid down in *OA 1824/2011 Brig Ram Chander Malik Vs UoI & Ors* as has attained finality vide Supreme Court order dated 10.12.2014 in case of *UOI & Ors Vs Brig Ram Chander Malik (Civil Appeal No 659/2014)*. We are of the opinion that the

assessment of disability is held to be 40% & aggravated by service, therefore, applicant is held entitled to grant of Disability Pension.

15. Regarding broadbanding benefits, we find that the *Hon'ble Supreme Court in its order dated 10.12.2014 in Union of India v. 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/Legal) 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).

16. Therefore, in view of our analysis, the OA is allowed and Respondents are directed to *grant benefit of disability element of pension @ 30% for life* for DILATED CARDIOMYOPATHY, which shall be *rounded off to 50%* in view of judgement of Hon'ble Apex Court in Union of India versus Ram Avtar (supra) from the date of discharge i.e. 30.06.2005. However, the arrears shall be restricted to three years prior to the date of filing of OA (13.12.2019) keeping in view the law laid down in the case of *Union of India and others Vs. Tarsem Singh*[2008(8) SCC 649].

17. Accordingly, the respondents are directed to calculate, sanction and issue PPO 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.

18. Consequently, the O.A. 2324/2019 is allowed.
19. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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