

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

105.

OA 2567/2022 with MA 3469/2022 & 4540/2024

Ex MWO Pramoda Kumar Nayak Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Baljeet Singh and
Ms. Deepika Sheorn, Advocate
For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM

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

ORDER
15.10.2024

MA 3469/2022

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648), the delay in filing the OA is condoned. MA stands disposed of.

MA 4540/2024

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

3. OA 2567/2023

Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application and the reliefs claimed in para 8 read as under:

- a. *To set aside the impugned order letter No. Air HQ/99798/1/626096/DAV/DP/CC dt 26.09.2022 and Release Medical Board dt 23.06.2018.*
- b. *To direct the respondents to grant disability element of pension @30% with effect from the date of Release by treating the disability of the applicant as attributable to and aggravated by the Air Force Service.*
- c. *To direct the respondents to grant the benefit of rounding off to disability element of pension of the applicant @ 50% (30% to be rounded off to 50%) with effect from date of discharge with all consequential benefits.*
- d. *To direct the Respondents to pay the due arrears of disability element of pension with interest @12 p.a. with effect from the date of discharge till actual payment.*
- e. *To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.*

4. The applicant was enrolled in the Indian Air Force on 10.10.1980 and released on 31.03.2019. The applicant submits that for the purpose of Primary Hypertension, the disability has been assessed @ 30% for life as is evident from the medical records.

5. 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 Release Medical Board @ 30%.

6. Accordingly, we allow this application and direct the respondents to grant disability element of pension to the applicant for Primary Hypertension @ 30% for life which be rounded off to 50% for life from the date of release i.e., 31.03.2019 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, as the applicant has approached the Tribunal after a considerable delay, the arrears be restricted to three years prior to the date of filing of OA i.e. 11.04.2023.

7. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order, failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

8. No order as to costs.

9. Pending miscellaneous application, if any, stands disposed of.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/k/