

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

OA 2653/2023 WITH MA 3768/2023

JWO Hukum Singh Shekhawat (Retd) ... Applicant  
Versus  
Union of India and Ors. ... Respondents

For Applicant : Mr. N.K. Mishra, Advocate  
For Respondents : Ms. Jyotsna Kaushik, Advocate

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

ORDER

MA 3768/2024

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.

2. MA stands disposed of.

OA 2653/2023

3. 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 disabilities of

the applicant as attributable to/aggravated by military service and grant disability element of pension @30% rounded off to @50% 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 30.08.1991 and was discharged from service on 31.08.2020 after rendering total 29 years and 01 day of regular service. The Release Medical Board dated 22.11.2019 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% being neither attributable to nor aggravated (NANA) by Air Force Service.

5. The applicant was communicated through his release medical Board that he was not entitled for disability pension as the diseases, he was acquired with were declared neither attributable to nor aggravated by the military service by the Release Medical Board. Aggrieved by the aforesaid rejection, he preferred his first appeal on 30.09.2021 and the same was rejected by the respondents vide letter dated 18.08.2022 stating that the aforesaid disabilities were considered as neither

attributable to nor aggravated by military service (NANA). After the aforesaid rejection, the applicant has filed this OA.

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 disability (i) suffered by the applicant is attributable to or aggravated by military service.

10. During the course of submissions, it was argued on behalf of the respondents that the applicant was a smoker and regular drinker of alcohol and, therefore, he was personally responsible for the disability suffered. On a bare perusal of the medical records placed before us we do not find any evidence of the

applicant being a regular smoker or alcohol drinker. In fact medical documents of the RMB conducted on 22.11.2019 at 32 Wing AF has recorded to the effect that the applicant is a non smoker and social drinker. That being the finding, we are inclined to disagree with the submissions thereof.

11. 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.

12. 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/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).

13. 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.

14. Accordingly, in view of our analysis, the OA is partly allowed and the respondents are directed to grant benefit of disability element of pension for PRIMARY HYPERTENSION @30% for life, which be rounded off to 50% in view of judgement of Hon'ble Apex Court in Union of India Vs Ram Avtar (supra) from the date of discharge, i.e. 31.08.2020. Since the OA has been filed on 31.08.2023 and is well within the period of three years as per the law laid down in the case of Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648), therefore, we are not inclined to restrict the arrears to three years from the date of filing of this OA or the date of applicant's

retirement/discharge. Thus, the arrears shall be disbursed to the applicant within four months from the receipt of a copy of this order failing which he shall earn interest @ 6% p.a. till the actual date of payment.

15. Consequently, the OA 2653/2023 is partly allowed.
16. No order as to costs.
17. Pending miscellaneous application, if any, stand disposed of.

Pronounced in the open Court on 13 day of September, 2024.

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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

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