

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
OA 299/2019 WITH MA 795/2019

Ex Sgt RK Ray ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. Arvind Kumar, Advocate

CORAM

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

ORDER

MA 795/2019

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.

OA 299/2019

2. Invoking the jurisdiction of this Tribunal under Section 14 of The Armed Forces Tribunal Act, 2007, the instant OA has been filed praying for the following prayers :~

(a) *Direct respondents to quash and set aside the impugned letter No Air HQ/99798/1/774223 /DAV/DP/CC dated 17.01.2019. And/or*

- (b) *Direct respondents to treat the disabilities PIVD C-5-C6, C6-C7 M47.5 assessed @20% of the applicant as attributable to aggravated by military service and grant disability element of pension from the date of retirement along with benefit of broad banding, and/or*
- (c) *Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a from the date of retirement with all the consequential benefits.*
- (d) *Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.*

BRIEF FACTS

3. The factual matrix of the case is that the applicant was enrolled in the Indian Air Force on 06.11.1997 and was discharged from service on 30.11.2017 on completion of 20 years and 25 days. At the time of his retirement he was brought before the Release Medical Board on 27.02.2017, which assessed his disability viz. (i) PIVD C5-C6, C6-C7 (M 47.5) @ 20% for life - aggravated by service.

4. The initial claim for grant of disability pension was considered and denied by the Competent Authority and he was rejected the disability claim vide letter dated 23.05.2018. The applicant filed a legal notice dated 13.12.2018 which replied to vide letter dated 17.01.2019 denying his claim to disability pension. Aggrieved by this the applicant filed the instant OA.

CONTENTIONS OF THE PARTIES

5. Learned counsel for the applicant submits that when he joined the Indian Air Force, he had been found medically fit and no note of any disability was made in respect of any disease including the present disabilities by the Medical Board and that the Release Medical Board has held his disability ID (i) PIVD C5-C6, C6-C7 (M 47.5) @ 20% for life - aggravated by service.

6. Per Contra, learned counsel for the respondents submits through the counter affidavit that the applicant had given his unwillingness / refusal to undergo treatment / surgery for both the disabilities and that his disability percentage could have been reduced if the applicant had undergone the treatment/ surgery.

ANALYSIS

7. On a consideration of the submissions made on behalf of either side and the verdict of the Hon'ble Supreme Court in Dharamvir Singh (supra), Rajbir Singh (supra), Sukhvinder Singh (supra) as applicable at the relevant time when the applicant was discharged from service on 30.11.2017 in low medical category with a PROLAPSE INTER VERTEBRAL DISC(PIVD) C5-C6, C6-C7 (M 47.5) - aggravated by service

with the Release Medical Board having assessed his disability @20% for life coupled with the factum that onset of the disability is in Sept 2016 as per the medical documents.

8. Significantly in Civil Appeal No. 1498/2011 in the case of Ex Sgt Suresh Kumar Sharma which was taken up along with the Civil Appeals considered by the Hon'ble Supreme Court in Union of India & Ors. Vs. Rajbir Singh the prayer made for the grant of the disability elements of pension in relation to the disability of INTER VERTEBRAL DISC PROLAPSE was granted the disability being held to be attributable to and aggravated by military service.

CONCLUSION

9. In view of the aforesaid analysis, the prayer made by the applicant in the present OA is thus allowed and the respondents are directed to grant the disability element of pension to the applicant in relation PIVD C5-C6, C6-C7 (M 47.5) @ 20% for life - aggravated by service, rounded off to 50% with effect from the date of conduct of Release Medical Board in terms of the verdict dated 10.12.2014 of the Hon'ble Supreme Court in the case of Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012).

10. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

11. With the aforesaid directions, the present OA 299/2019 is disposed of.

12. No order as to costs.

Pronounced in the open Court on 18 October, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Ps