

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

115.

OA 3511/2023 WITH MA 2043/2024
AND 4715/2023

MWO Kengar Sanjay Baji (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Kitendra Tiwari, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate

CORAM :

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

ORDER
04.10.2024

MA 4715/2023

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay in filing the present OA. In view of the judgment of the Hon'ble Supreme Court in the matter of Union of India and Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371] and the reasons mentioned in the application, the delay in filing the OA is condoned. MA stands disposed of.

MA 2043/2024

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

OA 3511/2023

3. Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application seeking grant of disability pension.

4. The applicant was enrolled in the Indian Air Force on 15.09.1983 and discharged from service on 31.05.2022. The applicant submits that for the purpose of disability- Diabetes Mellitus Type-II, has been assessed @ 20% 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 Vs. Union of India and others (2013) 7 SCC 316 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, we see no reason not to allow the prayer of the applicant with regard to the aforesaid disability.

6. Furthermore, in accordance with the judgment of Hon'ble Supreme Court in Commander Rakesh Pande Vs. Union of India and Ors. [Civil. Appeal No. (s) 5970/2019], decided on 28.11.2019, we find that the issue pertaining to grant of disability pension for DM-II as well as the question of disabilities of permanent nature to be deemed to have been assessed for life, has been settled.

7. As far as reliance of the respondents on the order dated 11.09.2023 in *OA 121/2021, AFT (RB, Chennai) titled Ex Sub M Vijaykannan Vs. Union of India and Ors.* is concerned, the said issue has been adequately settled by the judgement of the Principal Bench of this Tribunal in the case of *Ex JWO Krishan Kumar Tyagi Vs. Union of India and Ors.* (OA 2176/2019) wherein it held that by virtue of the fact that the said judgement did not consider the judgement rendered in *Ex. Power Satyaveer Singh [C.A. 7368/2011]* as has been upheld by the Hon'ble Supreme Court vide the verdict in *Union of India and Anr Vs. Rajbir Singh [Civil Appeal 2904/2011; decided on 13.02.2015]* nor the judgement of Hon'ble Supreme Court in *Commander Rakesh Pande (supra)* wherein Hon'ble Supreme Court has upheld the judgement of this Tribunal in *Cdr Rakesh Pande vs Union of India and Ors., [OA 1532/2016 AFT (PB), New Delhi; decided on 06.02.2019]* for grant of disability pension for the disability of Diabetes Mellitus, and therefore, in our considered view, the decision in *Ex Sub M Vijaykannan (supra)* is limited to the facts of that case, and cannot be held to be a binding precedent.

8. Accordingly, we allow this application and direct the respondents to grant disability element of pension to the applicant @ 20% for life which be rounded off to 50% for life from the date of his retirement 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.

9. 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.

10. No order as to costs.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


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

/vks/