

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

96.

OA 3830/2023 WITH MA 2652/2024
AND MA 5112/2023

JWO Rakesh Kumar Gupta Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Durgesh Kumar Sharma, Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM

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

ORDER
08.10.2024

MA 2652/2024

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

2. The MA stands disposed of.

MA 5112/2023

3. Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the MA is allowed condoning the delay in filing the OA.

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4. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

“(a) Quash and set aside the impugned letter dated 01 May 23 & 28 Apr 23.

“(b) Direct respondents to grant disability e pension @ 50% after rounding off from 30% for life as recommended by RMB to the applicant with effect from 01 Jan 2023 i.e. the date of discharge from service with interest @ 12% p.a. till final payment is made.

“(c) Direct the respondents to pay Rs. 50,000/- towards mental harassment and agony caused to applicant by respondent and also direct the respondent to pay Rs. 50,000/- for litigation cost.

“(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.”

5. The applicant was enrolled into the Indian Air Force on 04.11.1985 and discharged from service on 31.12.2022. The applicant was examined by a duly constituted RMB on 12.08.2022, which held his disability of Primary Hypertension @ 30% for life and it was held that the disability was neither attributable to nor aggravated by military service. The applicant submits that for the purpose of Primary Hypertension, the disability has been assessed @ 30% as is evident from the medical records. The composite disability for the ailment has been assessed at 30% for life.

6. 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] 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 competent Medical Board @ 30%.

7. The respondents are directed to grant disability element of pension for the disability of Primary Hypertension to the applicant @ 30% for life which be rounded off to 50% for life from the date of retirement, i.e., 31.12.2022, 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.

8. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 30% for the disability of Primary Hypertension rounded off to 50% for life and direct the respondents 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.

9. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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