

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

OA 83/2023 WITH MA 117/2023

Sub Maj Gyan Singh (Retd) ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Manoj Kr Gupta, 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

MA 117/2023

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 83/2023

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 consider his second disability as attributable to/aggravated by military service and grant disability element of pension @60% rounded off to 75% with effect from the date of retirement of the applicant; along

with all consequential benefits.

4. The applicant was enrolled in the Indian Army on 24.06.1986 and was discharged from service on 31.07.2016. The Release Medical Board was conducted on 23.05.2015, wherein his first disability ID(i) "ATRIAL FLUTTER AND ATRIAL FIBRILLATION (POST RFA) (1-48)" was considered as aggravated by military service and percentage of disablement was assessed @ 40% for life whereas, his second disability "PRIMARY HYPERTENSION (1-10)" was considered as Neither Attributable to Nor Aggravated(NANA) by Military Service and percentage of disablement was assessed @ 30% for life with net assessment qualifying for disability pension was assessed @ 40% for life.

5. The initial claim for disability pension of the applicant was adjudicated by the competent authority which according to the relevant rules and regulations, concluded that his first disability ID(i) "ATRIAL FLUTTER AND ATRIAL FIBRILLATION (POST RFA) (1-48)" was considered as aggravated by military service with percentage of disablement assessed @ 40% for life and was subsequently granted disability element of pension @ 40% vide PPO No S/CORR/45831/2016

dated 18.08.2016, which was rounded off to 50% vide PPO No.180201601423-0103 dated 24.12.2018. Aggrieved by the non-consideration of disability "Primary Hypertension (1-10)" for grant of disability element, the applicant submitted an appeal dated 29.07.2017 which was rejected vide letter dated 26.07.2018. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

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 Army 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 the service. Further the injury sustained on duty was due to the stress and strain of service by arguing that the applicant had met with the accident while performing his duties, therefore, he is entitled to the aforesaid benefit and claim made by him in this OA.

7. Per Contra, learned counsel for the respondents submits

that under the provisions of Regulation 53(a) of the Pension Regulations for the Army, 2008, (Part-I), *“an individual released/retired/discharge on completion of terms of engagement or on completion of service limits or an attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20 percent or more.”*

8. Relying on the aforesaid provision, learned counsel for the respondents further submits that the disability of Primary Hypertension of the applicant was assessed as “neither attributable to nor aggravated” by military service and not connected with the military 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 view that it is not in dispute that the extent of disability was assessed to be above 20% which is the bare minimum for

grant of disability pension in terms of Regulation 53(a) of the Pension Regulations for the Army, 2008, (Part-I).

10. It is pertinent to note that at the time of the onset of the disease, the applicant was overweight, with an actual weight of 72 Kg as against an ideal weight of 64 Kg. We also take note of the fact that the weight of the applicant further increased beyond the permissible limit at the time of RMB and the same was recorded as 75 Kg.

11. We cannot shy away from the fact, that the disability, i.e., Primary Hypertension is due to interplay of metabolic and lifestyle factors and failure in maintaining the ideal body weight which can be managed by regular exercise and restricting diet, and the fact that the applicant being overweight signifies that he has remained obese over a period of time, thereby, himself inviting the disabilities, and in such a case, it would be grossly unjustified for us to ignore the aforesaid facts.

12. Applying the above parameters to the case at hand, we are of the view with respect to disability of Primary Hypertension, there is no denial from the fact that if the claimant is himself not responsible enough to control the factors which are well within his voluntary control, he cannot be allowed to garner benefit of

such beneficial schemes and provisions. Therefore, the applicant is not entitled for disability pension for the disability of Primary Hypertension.

13. Therefore, we observe that the applicant is rightly receiving the disability element of pension @ 40%, rounded off to 50%, for his first disability, ID(i) 'Atrial Flutter and Atrial Fibrillation (Post RFA) (1-48),' and is not eligible for the disability element of pension for his second disability, ID (ii) 'Primary Hypertension.'


14. In view of the aforesaid analysis, the present OA is devoid of merits and hence, liable to be dismissed.

15. Consequently, the OA 83/2023 is dismissed.

16. No order as to costs.

17. Pending miscellaneous applications, if any, stand closed.

Pronounced in the open Court on 18th day of November, 2024.


(JUSTICE RAJENDRA MENON)
CHAIRPERSON


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

Akc

OA 83/2023
Sub Maj Gyan Singh (Retd)