

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

OA 10/2023

WO Shripal Singh Pundir (Retd.)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Ramniwas Bansal, Advocate
For Respondents : Mr. Sudhir Kumar, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

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) *To quash and set aside the applicant's RMB proceedings to the extent the order denies grant of disability element of pension to the applicant.*
- (b) *To set aside the impugned order and direct the respondents to grant the disability element of pension @30%, broad-banded to 50% along with all consequential benefits, with arrears and interest @12% p.a. w.e.f. date of discharge, by treating disease as attributable to and aggravated by military service, in view of the Hon'ble Apex Court judgment in Rajbir Singh (Supra) & Dharamvir Singh (Supra), or*

- (c) ***To pass such orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.***

BRIEF FACTS

2. The applicant was enrolled in Indian Air Force on 22.03.1984 and discharged from service on 31.01.2022 under the clause "On attaining the age of superannuation" after rendering 37 years 10 months and 09 days of regular service. The applicant was found fit to be released in low medical category A4G2(P), for the disability of 'Primary Hypertension (Old)'. The applicant was subjected to a Release Medical Board (RMB) on 17.03.2021 whereby the percentage of the disability 'Primary Hypertension' was assessed @ 30%, however, the net qualifying percentage for the disability pension was nil for life as the disability was considered as 'neither attributable to nor aggravated by military service'.
3. The initial claim for grant of disability pension of the applicant was rejected and the decision was communicated to the applicant vide letter No. Air HQ/99798/1/678734/01/22/DAV (DP/RMB) dated 10.01.2022. Against

the rejection of his claim, the applicant preferred an Appeal-cum- notice dated 15.05.2022, which is stated to be under process by the respondents at the time of filing of this OA. Aggrieved by this, the applicant has filed the present OA. In the interest of justice, in accordance with Section 21(2)(b) of the AFT Act, we take up the present OA for consideration.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant joined the IAF on 22.03.1984 and was discharged from the service on 31.01.2022 in the rank of WO after rendering more than 37 years of long service in the Indian Air Force during which he suffered with the said disability.

5. The learned counsel for the applicant submitted that he was subjected to a thorough medical examination conducted by the medical board at the time of his entry into service and was found medically fit to join the service in Indian Air Force and was posted to various Air Force units in varied geographical and climatic conditions.

6. The learned counsel for the applicant submitted that in addition to conditions of service frequent changes in weather and social environment at different geographical locations were the main causes of stress and strain on the applicant.

7. The learned counsel for the applicant placed reliance on the verdict of the Hon'ble Supreme Court of India in ***Dharamvir Singh Vs Union of India & Others*** (Civil Appeal No. 4949/2013); (2013) 7 SCC 316. He also placed reliance in the cases of ***UOI & Ors. Vs. Rajbir Singh*** (2015) 12 SCC 264. In ***Dharamvir Singh (supra)***, the Hon'ble Supreme Court held as under :-

“28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under “Entitlement Rules for Casualty Pensionary Awards, 1982” of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged

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from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 - "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above."

8. Per contra the respondents submit that the applicant had a personal history of being a chronic alcohol consumer and chronic smoker and the disability arose due to applicant's smoking habits and consumption of alcohol.

9. The learned counsel for the respondents submitted that the disability "Primary Hypertension" also has no close time association of stress and strain since at the time when the applicant suffered from the said disability he was posted in peace area. The learned counsel further submitted that as per Para 153 of the Pension Regulations for the Air Force, 1961 (Part-I), the applicant is not entitled to the disability pension for the disability being NANA.

ANALYSIS

10. We have heard the learned counsel for the parties and have gone through the records produced before us.

11. In the instant case, the onset of the disability *qua* the applicant was after 34 years of his engagement in the Indian Air Force and the applicant suffered with the disability of "Primary Hypertension (Old)" when he was posted at Tambaram, a peace area from 30.03.2015 to 26.01.2020.

12. It is essential to advert to scientific literature available in public domain such as <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8619602/> published by National Library

of Medicine on 10.11.2021 accessed on 17.01.2024 which
read as under:-

“In this way, the onset of hypertension is affected by not just one factor but multiple factors, including both alcohol intake and smoking.

Many past studies identified alcohol as one factor that worsens hypertension. In these studies, a dose-response relationship between alcohol consumption and hypertension was specifically noted. On the other hand, the relationship between smoking and hypertension was not found to be significant. However, a transient increase in blood pressure while smoking cigarettes, as well as findings supportive of a causal association of smoking burden with a higher resting heart rate, were noted, despite how no direct relationship between smoking and hypertension has been documented. Furthermore, numerous studies on the risks of cardiovascular disease (stroke and heart disease) have found that alcohol and smoking raise by several fold the risk of cardiovascular diseases. In these studies, alcohol, smoking, and hypertension are all factors similarly affecting the outcome of cardiovascular diseases. Some previous studies have investigated the relationship between hypertension and both alcohol and smoking, but none, to our knowledge, have focused on the synergistic health effects of the two together on hypertension.”

13. In addition to the fact that the applicant was a chronic alcohol consumer and smoker, it is pertinent to mention that the applicant contracted with the said disability in 2018. In the instant case, along with the RMB proceedings the respondents have placed on record the Summary of the Case sheet of medical examination which reflects the personal history of the applicant to the effect that the applicant has been a chronic alcohol consumer and has a history of smoking vide Annual Medical Examination dated 05.04.2005. Therefore, it is safe to say that smoking and drinking could be one of the reasons for occurrence of the said disability which cannot be overlooked.

14. Thus, in view of the circumstances of the instant matter, we do not find any infirmity in the opinion of the Release Medical Board with regard to the disability being neither attributable to nor aggravated by military service, based on which, the disability element of pension was denied to the applicant and the applicant thus is not entitled to the grant of the disability element of pension for which the applicant is

himself responsible being a chronic smoker and an alcohol consumer.

CONCLUSION

15. In view of the aforesaid analysis and the parameters referred to above, there being no infirmity in the opinion of the RMB, we hold that the applicant is not entitled to any relief and thus the OA 10/2023 stands dismissed.

16. There is no order as to costs.

Pronounced in the open Court on this day of 31st May, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)