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

OA 1151/2023 WITH MA 1779/2023

WO Arakhita Mallick (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Durgesh Kumar Sharma, Advocate
For Respondents : Mr. D.K. Sabat, Advocate

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

ORDER

MA 1779/2023

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. MA stands disposed of.

OA 1685/2019

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

- (a) *Quash and set aside the impugned letter dated 31 May 2021 and 04 March 2020.*
- (b) *Direct the respondents to grant disability pension @75% after rounding off from 60% for life as recommended by*

RMB to the applicant with effect from 01 June 2020, 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 the applicant by respondents and also direct the respondents to pay Rs. 50,000/- for litigation cost.

3. The factual matrix of the case is that the applicant was enrolled into Indian Air Force on 18.05.1982 and retired from the Indian Air Force on 31.05.2020 after about 38 years and 07 days of qualifying service. During the Release Medical Board conducted prior to his retirement, he was found to be suffering from the disability, namely ID (i) "Coronary Artery Disease- AWMI, Left Main with TVD post CABG, Moderate LV function @60% for life and his medical category was permanently downgraded to A4G4(P), while his disability was held to be Not Attributable Nor Aggravated (NANA).

4. The initial claim/appeal of the applicant for the disability pension was rejected by the Competent Authority and the outcome of the same was communicated to the applicant vide Letter No. Air HQ/99798/1/680281/05/20/DAV (DP/RMB) dated 04.03.2020. Against the said rejection, the applicant preferred a second appeal

dated 30.06.2021, which was rejected vide letter No. AirHQ/99798/5/340/2020/680281/DP/AV-III dated 23.08.2022. Aggrieved by the repeated rejections, the applicant has approached this Tribunal.

5. Placing reliance on the judgement of the Hon'ble Supreme Court in Dharamvir Singh Vs. UOI & Ors [2013 (7) SCC 36], Learned Counsel for 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 Air Force 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 military service.

6. Per Contra, Learned counsel for the respondents submits that under the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Air Force service and is assessed @ 20% or more.

7. Relying on the aforesaid provision, learned counsel for respondents further submits that the aforesaid disability of the

applicant was assessed as “neither attributable to nor aggravated” by Air Force service and not connected with the Air Force service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

8. 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 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I). The only question that arises in the above backdrop is whether disability suffered by the applicant was attributable to or aggravated by Air Force service.

9. The issue of attributability of a disease is no longer *res integra* in view of the verdict of the Hon’ble Apex Court in *Dharamvir Singh Vs. Union of India* (supra), 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 commission into the Military Service.

10. Furthermore it cannot be overlooked that the onset of the disability was on 13.06.2018; after enrolment of the applicant

on 18.05.1982, i.e., after 38 years of service in the Indian Air Force and in the 15th posting of the applicant. The cumulative stress and strain that the applicant would have undergone during this period of strenuous military service cannot be overlooked, prior to the onset of the disability does not suffice to dislodge the claim of the applicant, especially as the medical case sheet qua the applicant does not bring forth any contributory factors from the side of the applicant.

11. Regarding broadbanding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in Union of India Vs. Ram Avtar, Civil Appeal No. 418 of 2012 and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

12. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of a medical disease/disability and the disability must be presumed to have arisen in the course of

service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by air force service.

13. Therefore, in view of our analysis, the OA 1151/2023 is allowed and respondents are directed to grant the benefit of the disability element of pension @60% for life (for Coronary Artery Disease- AWMI, Left Main with TVD post CABG, Moderate LV function @ 60% for life), rounded off to 75% in view of the judgment of the Hon'ble Apex Court in Union of India versus Ram Avtar (supra) from the date of discharge, i.e., 31.05.2020. The arrears shall be disbursed to the applicant within three months of receipt of the copy of this order failing which they shall earn interest @ 6% p.a. till the actual date of payment.

14. No order as to costs.

Pronounced in the open Court on 9 day of December, 2024.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


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

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