

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

OA 1182/2017

Col (TS) Bhima Shankar Hippargi (Retd.) ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Ms. Sangeeta Tomar, Advocate
For Respondents : Mr. R.S. Chillar, Advocate

CORAM

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

ORDER

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 accept all the disabilities of the applicant as attributable to/aggravated by military service and grant disability element of pension @63% rounded off to 75% with effect from the date of retirement of the applicant; along with all consequential benefits.

2. At the time of final arguments on 24.04.2024, a fair statement had been made by the Learned Counsel for the applicant that she is only pressing for grant of disability pension for the disabilities (iii) Diabetes Mellitus Type II @20% and (iv) Primary Hypertension @30%, while she is in receipt of disability

pension for combined disability (i) Tear Medial Meniscus (Lt) Knee, Complete ACL Tear Knee (Lt) and Osteoarthritis Knee (Lt) @30% rounded off to 50%. As far as disability (ii) Simple Obesity is concerned, the applicant is not pressing for the same.

3. Applicant was commissioned in the Indian Army 23.08.1986 and retired on 31.08.2015. The Release Medical Board dated 17.06.2015 held that the applicant was fit to be released from service in composite low medical category for the disabilities - (i) Tear Medial Meniscus (Lt) Knee, Complete ACL Tear Knee (Lt) and Osteoarthritis Knee (Lt) @30%, (ii) Simple Obesity @1-5% (iii) Type II Diabetes Mellitus @20% and (iv) Primary Hypertension @30% with composite disability @ 63% for life while the qualifying element for disability pension was recorded as 30% for life on account of disability (i) being treated as attributable while other three disabilities being treated neither attributable to nor aggravated by military service (NANA).

4. Placing reliance on the judgement of the Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India & 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 DSC 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.

5. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Regulation 81(a) and 53(a) of the Pension Regulations for the Army, 2008, 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 military service and is assessed @ 20% or more.

6. Relying on the aforesaid provision, Learned Counsel for respondents further submits that the aforesaid disabilities of the applicant were 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.

7. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the extent of disability (iii) & (iv) was assessed to be above 20% which is the bare minimum for grant of disability pension in terms of

Regulation 81(a) and 53(a) of the Pension Regulations for the Army, 2008.

8. It is relevant to note that the applicant is constantly overweight with his actual weight being 97 kgs as against the Ideal weight of 70 Kgs, with the same trend visible before the onset of both the disabilities under consideration. We find that the applicant is not reducing the weight even after slew of directions advised by the medical experts including brisk walking, jogging and reducing the weight. We observe that the weight has not been reduced, thereby, clearly showcasing that onset of disability is the result of the applicant being alarmingly overweight and therefore, the argument that the applicant suffered the disability due to stress and strain of the service is wholly unfounded on the simple reasoning that the organisation cannot be held liable for the own actions of the applicant.

9. We cannot shy away from the fact, that the disability - Primary Hypertension and DM-II 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 is alarmingly overweight signifies that the applicant has remained obese over a period of time, thereby, himself inviting the disability, and in

such a case, it would be grossly unjustified for us to ignore the aforesaid facts.

10. Applying the above parameters to the case at hand, we are of the view with respect to disability - Primary Hypertension and DM Type-II, 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.

11. Therefore, in view of our analysis, the OA is liable to be dismissed.

12. Consequently, the OA 1182/2017 is dismissed.

13. No order as to costs.

Pronounced in the open Court on 8^H day of May, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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