

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

80.

OA 1288/2023 WITH MA 361/2024

Ex Nk Ranjit Kumar Ray ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Raj Kumar, Advocate  
For Respondents : Mr. Sudhir Kumar, Advocate

CORAM

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

ORDER  
16.02.2024

MA 361/2024

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

2. MA stands disposed of.

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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 accept the disabilities of the applicant 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 10.08.2000 and retired on 31.08.2022 after serving for 22 years and 22 days of qualifying service. The Release Medical Board dated 23.08.2022 held that the applicant was fit to be discharged from service in low medical category S1H1A1P3(P)E1 for the disability CHRONIC KIDNEY DISEASE (iga NEPHROPATHY (N18.9))@ 60% for life, with composite disability @ 60%, while the qualifying element for disability pension was recorded as NIL for life on account of disabilities being treated as neither attributable to nor aggravated by military service (NANA).

5. The initial claim of the applicant for grant of disability pension was rejected and communicated to the applicant vide Bihar Regiment letter No 4279216H/1/DP/NE dated 29.09.2022 with an advice to prefer an appeal within six months from the receipt of letter. The first appeal of the applicant vide letter No. 4278922/1/DP/NE dated 27.02.2023 was also rejected by the first Appellate Committee vide letter No. B/40502/1316/2022/AG/PS-4(1<sup>st</sup> Appeal) dated 31.01.2023 and the same was communicated to the applicant stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service as it does not fulfill the conditions laid down as per Rule 6, 10 and 11 of the Entitlement Rules for Casualty Pensionary award to Armed Forces Personnel-2008, read in conjunction with Para 71 Chap VI of

Guidelines for Medical Officers-2002 (Amended 2008).

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 v. 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 military service 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.

7. Learned Counsel for the applicant also submits that the disease was detected first time in Apr 2011 while on duty at High Altitude Area in Sikkim and had been placed in Low Medical Category in a case of 'Chronic Kidney Disease Nephropathy (N18.9)' thus the opinion of RMB to consider the disability as NANA after serving 11 years in military is unjustified.

8. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Para 53 (a) of the Pension Regulations for the Army, Part-I (2008), the primary condition for the grant of disability pension is an individual released/retired/discharged on completion of term of engagement or on completion of service if found suffering from a disability attributable to or aggravated by ~~military~~ 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 @ 20% or more.

9. The applicant submits that his prayer is now covered by a series of decisions of the Hon'ble Supreme Court, including *Dharamvir Singh Vs UoI & Ors (2013) 7SCC 316, Rajvir Singh (Supra) and AS Titaria (Supra), Union of India Vs Rajbir Singh (2015) 12 SCC 264, Punjab and Haryana High Court in Re Ex Naik Umed Singh Vs UoI in cWP No 7277 of 2013* decided on 14.05.2014.

10. 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 his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

11. 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 disabilities was assessed to be above 20% which is the bare minimum for grant of disability pension in terms of Para 53 (a) of the Pension Regulations for the Army, Part-I (2008). The only question that arises in the above backdrop is whether the disability suffered by the applicant was attributable to or aggravated by military service.

12. The issue of attributability of disease is no longer res integra in view of the verdict of the Hon'ble Apex Court in *Dharamvir Singh v. 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 enrollment into the military Service.

13. Furthermore, the issue regarding the attributability of Chronic Kidney Disease has been settled by the *Hon'ble AFT (RB) Chandigarh allowed OA 84 of 2021 in Bhagirah v. Union of India* wherein the Court has not only held that at the time of applicant entered into military service, this type of disease/disability did not exist and the disability accrued to him during the course of military service and the said disability can be attributed/aggravated by military service.

14. Regarding broadbanding benefits, we find that the *Hon'ble Supreme Court in its order dated 10.12.2014 in Union of India v. 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.

15. Therefore, in view of our analysis, the OA is allowed and Respondents are directed to *grant benefit of disability element of pension @ 60% for life, rounded off to 75%* in view of judgment of Hon'ble Apex Court in *Union of India versus Ram Avtar (supra)* from the date of discharge i.e. **31.08.2022**. The arrears shall be disbursed to the applicant within four months of receipt of this

order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

16. Consequently, the O.A. 1288/2023 is allowed.

17. No order as to costs.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

Ps  
OA 1288/2023