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

SUPPLEMENTARY

G.

OA 1388/2023 WITH MA 2134/2023

Gp Capt AK Maini (Retd) ..... Applicant

Versus

Union of India & Ors. ..... Respondents

For Applicant : Mr. Deepak Bansal, Advocate

For Respondents : Mr. Neeraj, Sr CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

15.04.2024

Vide our orders of even date, we have allowed the OA. Faced with the situation, learned counsel for the respondents makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007, to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Ps

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67.

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ORDER

MA 2134/2023

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in *Union of India and others* Vs. *Tarsem Singh* (2008) 8 SCC 648, the same is allowed condoning the delay in filing the O.A.

MA stands disposed of.

OA 1388/2023

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 pension with benefit of broad-banding with effect from the date of retirement along with all consequential benefits.

2. The applicant was enrolled in Indian Air Force on 14.12.1979 and was pre-maturely discharged at his own request on 31.10.2022. The Release Medical Board held that the applicant was fit to be discharged from service in composite low medical category for the disability ID (a) Diabetes Mellitus Type-II @ 15-19% and compositely assessed @ 15-19% for life 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).

3. The appeal of the applicant for grant of disability pension was rejected vide letter No. Air HQ/99797/4976/Dis/O/DAV-1(B) dated 28.11.2021. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

4. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh v. 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 Indian 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.

5. Per Contra, Learned Counsel for the Respondents submits that under the provisions of the Pension Regulations, the primary condition for the grant of disability pension is invalidated 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 disability of the applicant was assessed @ 15-19% for life and "neither attributable to nor aggravated" by military 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.

7. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, it is established that in so far as the disability of Diabetes Mellitus Type-II is concerned, the minimum assessment of the disability cannot be less than 20% in terms of MoD letter No. 16036/DGAFMS/MA (Pens)/Policy dated 20.07.2012, accorded concurrence on 12.05.2023 vide letter No. Air HQ/99801/4/DAV(Med.). The only question which needs to be decided is whether the disability is attributable to or aggravated by military service.

8. 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 commission into the Military Service.

9. Furthermore, the issue regarding the attributability of Diabetes Mellitus has been settled by the ***Hon'ble Supreme Court in Commander Rakesh Pande v. Union of India (Civil Appeal No. 5970 of 2019)*** wherein the Apex Court has not only held that the Diabetes Mellitus is a disease which is of permanent nature and will entitle the applicant to disability pension, but also observed that in case where the disability is of permanent nature, the disability assessed by the Medical Board shall be treated for life and cannot be restricted for specific period.

10. 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. 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).

11. 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 medical disease/disability, 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 military service.

12. Therefore, in view of our analysis, the OA is allowed and the Respondents are directed to ***grant benefit of disability element of pension @ 20% for the disability of Diabetes Mellitus Type II for life rounded off to 50% for life in view of judgement of Hon'ble Apex Court in Union of India versus Ram Avtar (supra)*** from the date of retirement i.e. 31.10.2011. 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. However, the arrears will be restricted to three years from the date of filing of this OA or the date of applicant's retirement/discharge, whichever is lesser, in keeping with the law laid down in the case of ***Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649].***

13. Consequently, the O.A. is allowed.

14. No order as to costs.

15. Pronounced in the open court on this 15th day of April 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/sm/