

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

OA 1485/2017 WITH MA 1109/2017

Sqn Ldr Shekhar Singh Rawat ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. R.K. Tripathi, 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

MA 1109/2017

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.

2. MA stands disposed of.

OA 1485/2017

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 composite @20% rounded off to 50%

with effect from the date of retirement of the applicant; along with all consequential benefits.

4. The applicant was commissioned in the Indian Air Force on 08.06.1978 and retired on 28.02.1997. The Release Medical Board dated 18.10.1996 held that the applicant was fit to be discharged from service in composite low medical category for the disabilities - (i) Diabetes Mellitus @ 11-14% and (ii) Primary Hypertension @15-19% for life with composite disability @ 20 % 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).

5. The claim of the applicant for grant of disability pension was rejected vide letter No. AIR HQ/24270/2037/PP&R-3/ 2013/D(PEN-C) dated 21.04.1997 while the representation of the applicant for grant of disability pension dated 21.05.2017 was rejected vide letter No. AIR HQ/99797/2037/Dis/O/DAV-(1B) dated on 28.07.2017 stating that the aforesaid disabilities were assessed at less than 20% and considered as neither attributable to nor aggravated by military service. 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 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 Air Force service.

7. Submitting on the issue of assessment, learned counsel submits that the disability (ii) - Primary Hypertension was assessed @ 15-19% which is in contravention of Guide to Medical Officers, 2002, wherein it has been clarified that the assessment of Primary Hypertension cannot be less than 30%, and disability (i) - Diabetes Mellitus Type -II cannot be assessed at less than 20% in view of the letter no. 16036/DGAFMS/MA(PENS) dated 20.07.2012.

8. 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.

9. 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 Air Force service and not connected with the Air Force service, while the applicant was overweight, was advised to reduce the weight but he did not and as such, he was liable for his own acts and his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

10. 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 less than 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).

11. As far as disability (ii) is concerned, we find that the minimum assessment in case of Primary Hypertension has been specified as 30%, in Guide to Medical Officers, 2002, therefore, clarifying that the disability Primary Hypertension cannot be assessed below 30%.

(h) Assessment based on treatment modality offered for IHD

The assessment is independent of NYHA assessment and not to be combined with NYHA assessment.

<i>(i) PTCA done</i>	<i>40-50%</i>
<i>(ii) CABG in triple vessel disease</i>	<i>50-100%</i>
<i>1. Essential hypertension:</i>	
<i>(i) Uncomplicated hypertension</i>	<i>30%</i>
<i>(ii) Hypertension with involvement of target organs (heart, brain, eye and kidney)</i>	<i>30-100%</i>
<i>(iii) Simple aneurysm aorta</i>	<i>30%</i>
<i>(iv) Dissecting aneurysm aorta</i>	<i>70%-100%</i>

12. As regards the disability (i) - Diabetes Mellitus is concerned, as per the guidelines enshrined in letter no. 16036/DGAFMS/MA(PENS) dated 20.07.2012 on the assessment of disability percentage in DM-II, the %age of disablement cannot be assessed at less than 20%, inter alia, the Ministry of Defence has specified therein to the effect:

1. There are no laid down guidelines for assessment of disability percentage in regard to diabetes mellitus and Epilepsy cases in Guide to Medical Officers (Military Pension) 2008. Due to lack of clear policy, problems are being faced in final adjudication and it is difficult to maintain uniformity. It is even more difficult to file reply in court cases.

2. Guidelines on assessment of disability percentage in Diabetes and Epilepsy cases in consultation with Senior Consultant (Medicine) have been framed. The details are as under :-

"Diabetes Mellitus (DM):

<i>(i) DM Type II on oral hypoglycemia agents (OHA) without target organ damage :</i>	<i>20%</i>
<i>(ii) DM Type II on insulin without target organ damage :</i>	<i>30%</i>
<i>(iii) DM Type I/Type II on insulin with TOD :</i>	<i>40% and above as per clinical assessment</i>

(iv) Impaired fasting glucose/impaired glucose tolerance :

less than 20%”

13. Observing above, the only question that arises in the above backdrop is whether the disability (i) Diabetes Mellitus Type-II and (ii) Primary Hypertension suffered by the applicant were attributable to or aggravated by Air Force service ?

14. 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. As regards the contention of the respondents that the applicant was overweight, a scrutiny of weight chart reveals that at the time of onset of the disabilities, applicant was within the permissible weight limit.

15. Furthermore, the issue regarding the disability being assessed for a specific duration 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.

16. 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).

17. 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, or the applicant being overweight, be presumed to have been attributable to or aggravated by air force service.

18. Therefore, in view of our analysis, the OA is partly allowed and Respondents are directed to grant benefit of disability element of pension @ 44% for life rounded off to 50% in view of judgement of Hon'ble Apex Court in Union of India v. Ram Avtar (supra) from the date of discharge i.e. 28.02.1997. However, the arrears shall be restricted to three years prior to the date of filing of OA. [Date of filing of OA: 18.08.2017]. 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.

19. Consequently, the OA 1485/2017 is allowed.

20. No order as to costs.

Pronounced in the open Court on 16 day of July, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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