

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

90.

OA 1605/2023

JWO Indresh Kumar Tyagi (Retd)	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Mr. Manoj Kr Gupta & Ms. Prachi Chaturvedi, Advocates
For Respondents	:	Mr. KK Tyagi, Advocate

CORAM

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

ORDER
16.04.2024

OA 1605/2023

Invoking the jurisdiction of this Tribunal; under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

“(a) To issue/pass an order or direction to set aside/quash the arbitrary order of denial of disability element of pension to the applicant as contained in Air HQ Impugned letter (Annexure A-1); and /or.

(b) Issue/pass an order or direction to the respondents to grant him 44% disability element of pension as assessed by the Medical Board along with benefit of rounding off to 50% in terms of Hon'ble Apex Court judgment in *Ram Avtar vs UoI & Ors*, by treating the onsets as attributable and aggravated to Military service, in terms of judgments ie, Annexure A-4 (supra); and/or.

(c) To direct the respondents to pay the due arrears of disability pension with interest @ 10% p.a; and/or pass such further order or orders, direction/Directions as this Hon'ble Tribunal may deem fit and proper in the interest of justice."

2. In this case, the applicant was enrolled in **Indian Army** on **27th March, 1987** and on completion of service was discharged on **30th November, 2022**. Even though the applicant is found to be suffering from the following two ailments viz. (i) Primary Hypertension and (ii) Seizure Disorder, release medical board dated 27th May, 2022 held his disability (a) Primary Hypertension @ 30% or life and (b) Seizure Disorder @ 20% for life, the composite assessment of disability for the two ailments have been assessed at 44% for life. During the course of hearing today, learned counsel for the applicant made a fair statement that for the present in this application, the applicant would only be pressing for disability element of pension pertaining to one ailment i.e., Primary Hypertension and he gives up his claim for all other ailments.

3. The applicant submits that for the purpose of Primary Hypertension, the disability has been assessed @ 30% as is evident from the medical records.

4. Keeping in view the consistent stand taken by this Tribunal based on the law laid down by the Hon'ble Supreme Court in the case of Dharamvir Singh v. Union of India and others (2013) 7 SCC 316 that Primary Hypertension may arise even in a peace area due to stress and strain of service, we see no reason not to allow the prayer of the applicant with regard to the disability Primary Hypertension, which has been assessed by the competent Medical Board @ 30%.

5. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 30% rounded off to 50% for life with effect from the date of his discharge. All other claims stand rejected.

6. The respondents are directed to grant disability element of pension to the applicant @ 30% for life which be rounded off to 50% for life from the date of retirement in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012) decided on 10.12.2014.

7. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant. The arrears shall be disbursed to the applicant within four

months from the date of receipt of a copy of this order, failing which, these shall carry interest @ 6% per annum till the date of payment.

8. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Priya