

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

OA 1608/2018 with MA 416/2020

Gp Capt KP Sharma (Retd.)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate

For Respondents : Dr. Vijendra Singh Mahndiyani, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

O R D E R

MA 416/2020 :

Reply has been filed. There being delay of 10 days' delay in filing the same, this application has been filed by the respondents for condonation of delay. In view of the averments made, the delay is condoned and reply is taken on record.

Accordingly, MA stands disposed of.

OA 1608/2018

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

- (a) **To direct the respondents to produce all medical records of the applicant.**
- (b) **To direct the respondents to grant disability pension to the applicant from the date of discharge and from 01.02.2014.**
- (c) **To direct the respondent to grant the benefit of rounding off the disability pension from 30% to 50% from the date of discharge.**
- (d) **To direct the respondents to issue a corrigendum PPO with the necessary changes pertaining to the disability and broad banding of the disability pension.**
- (e) **To direct the respondents to pay arrears of disability pension and broad banded disability pension along with interest @ 12%.**
- (f) **To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.**

BRIEF FACTS

2. The applicant was commissioned in the Indian Air Force on 04.06.1982 and released from service on 31.01.2014 on attaining age of superannuation. The applicant was found fit to be released in low medical category A4G4(P), for the disabilities of (i) "Obesity (Old) @ Nil, (ii) Acute Chronic Pancreatitis (Old) assessed @ 11-14% and (iii) Secondary Diabetes Mellitus (Old) assessed @ 20%. The applicant was subjected to a Release Medical Board (RMB) on 07.12.2013 whereby the percentage of composite disabilities was assessed @ 30%, however, the net qualifying percentage for the



disabilities was nil for life as all the disabilities were adjudged as neither attributable to nor aggravated by military service.

3. The claim for disability pension was adjudicated and rejected by the Competent Authority dated 15.01.2014 suggesting him that he may prefer an appeal against rejection of his initial claim for disability element of pension within six months. The applicant preferred first Appeal dated 21.03.2018 against rejection of his disability pension claim, which was adjudicated and rejected by the Appellate Committee on First Appeals (ACFA) dated 12.12.2108. Aggrieved by the rejection of the disability pension claim from the respondents, the applicant has filed this OA. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(2)(b) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

4. The applicant was commissioned in the Indian Air Force on 04.06.1982 and released from service on 31.01.2014 in the rank of Gp Capt (TS) after rendering 31 years and 06 months



of long service in the Indian Air Force during which he suffered with the said disability.

5. The learned counsel for the applicant submitted that the applicant was subjected to a thorough medical examination conducted by the medical board at the time of his entry into service and was found medically fit to join the service in Indian Air Force and was posted to various Air Force units in varied geographical conditions.

6. The learned counsel submitted that despite all hardships, the applicant continued to give his best to the organization with best of his abilities and he faced many hardships while he was posted at various places in the Indian Air Force.

7. The learned counsel for the applicant submitted that the instant case is squarely covered by the judgments of the Hon'ble Supreme Court in the case of **Dharamvir Singh v. Union of India and others** (2013) 7 SCC 316, reliance was also placed on behalf of the applicant on order of this Tribunal in OA no. 2439/2022 in case of **Lt Col Virender Singh(Retd.) Vs UOI & Ors.**, OA No 134 of 2016 **Ex L/NK Kothapalli**



Nagaiah Vs Union of India, and OA No. 145 of 2016 in case ***Ex Hony. Nb. Sub. J. Sylus Vs UoI & Ors,*** wherein similarly situated personnel were given relief.

8. Per contra, the learned counsel for the respondents submitted that the Secondary Diabetes Mellitus (Old) disability is basically a lifestyle related metabolic disorder and the onset occurred in peace station. The learned counsel further submitted that prior to the onset of the disability, the applicant has served only in peace stations since 1997 and the onset of the disability occurred in July 2013 and there has been no close time association of military service with stress and strain or dietary compulsions of field/HAA/CIOps. Hence, the disability is NANA as per para 26 of Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008.

9. The learned counsel for the respondents also submitted that the applicant was overweight and was habitual smoker and drinker. The applicant was advised to reduce his weight and for absolute abstinence from alcohol and not to smoke. The learned counsel for the respondent submitted the weight chart of the applicant which reads as under:-

Date	Type of Med Exam	Actual Weight in KG	IBW (In KG)	BMI	Advice
26 May 81	Primary	62	-	-	-
27 Oct 98	Initial MB	93	64.5	-	Low Fat diet, regular exercise
02 Aug 99	Recategorisation	81	64.5	28.0	-
05 Aug 00	Recategorisation	95	-	33.0	Reduce weight with dietary restriction & regular exercise.
02 Mar 01	Recategorisation	81	65	-	Reduce weight with dietary restriction & regular exercise.
27 May 02	Recategorisation	81	65	-	Reduce weight with dietary restriction & regular exercise.
22 Aug 03	Recategorisation	78	66	26.88	Reduce weight to about 73 kg by dietary restriction & regular exercise.
07 Jul 04	Recategorisation	85	66.5	-	Reduce weight to be dietary restriction & regular exercise.
18 Aug 05	Recategorisation	90	66.5	-	Regular exercise and reduce weight gradually.
18 Aug 06	Recategorisation	96	66.5	32.87	Reduce weight to by dietary control & regular exercise.
07 Mar 07	Recategorisation	98	66.5	33.56	Reduce weight with dietary restriction & regular exercise.
13 Jun 08	Recategorisation	98	67	33.56	Reduce weight with dietary restriction &

					regular exercise.
03 Dec 10	Recategorisation	91	-	-	
07 Dec 11	Recategorisation	92	67	32.14	Reduce weight with dietary restriction & regular exercise.
07 Dec 13	RMB	80	67	27.35	

10. The learned counsel for the respondents also submitted that the applicant was overweight and the disability of Secondary Diabetes Mellitus (Old) of the applicant is directly related to his overweight condition.

11. The learned counsel for the respondents placed reliance on the orders passed by the Armed Forces Tribunal, Principal Bench at New Delhi in case of **Col (Mrs.) Dropadi Tripathi (Retd.) Vs Union of India & Ors**, in OA 1843 of 2018, decided on 13.04.2023, wherein the claim of disability pension was disallowed because the applicant therein was found to be overweight.

ANALYSIS

12. In so far as the disabilities of (i) "Obesity (Old) @ Nil, and (ii) Acute Chronic Pancreatitis (Old) assessed @ 11-14% are concerned, the said disabilities are assessed below 20% and

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does not fulfill the twin criteria as per Rule 153 Pension Regulations for IAF, 1961 (Part-I) and hence are not admissible.

13. It is a fact that the applicant vide RMB dated 07.12.2013 has been assessed with the disability of Secondary Diabetes Mellitus (Old) @ 20% which has been adjudged as NANA by the RMB.

14. A bare perusal of the posting profile of the applicant at Annexure A-2 of the RMB reveals that the applicant was posted throughout at peace station prior to the onset of the disability which occurred whilst he was posted to Allahabad in July 2013 which is also a peace station.

15. A perusal of the weight chart of the applicant from May 1981 to December 2013 indicates that the applicant was overweight since October 1998 and the applicant was advised to reduce his weight from October 1998 till his retirement. The applicant in 2013 when the onset of disability occurred was overweight by 16%.

16. The publication released by the National Library of Medicine (National Center for Biotechnology Information) NLM,

titled "Diabetes" on 17.11.2023 was examined by us and which reads to the effect:-

"The accumulation of an excessive amount of body fat can cause type 2 diabetes, and the risk of type 2 diabetes increases linearly with an increase in body mass index. Accordingly, the worldwide increase in the prevalence of obesity has led to a concomitant increase in the prevalence of type 2 diabetes. The cellular and physiological mechanisms responsible for the link between obesity and type 2 diabetes are complex and involve adiposity-induced alterations in β -cell function, adipose tissue biology, and multi-organ insulin resistance, which are often ameliorated and can even be normalized with adequate weight loss."

This bulletin of NLM specifically brings out the effect of overweight/obesity on Diabetes.

17. Furthermore, Para 26, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008 reads as under:-

"26. Diabetes Mellitus

.....xxxxxxxx.....

Type 2 Diabetes Mellitus will be conceded aggravated if onset occurs while serving in Field, CIOPS, HAA and prolonged afloat service and having been diagnosed as Type 2 diabetes mellitus who are required serve in these areas.

Diabetes secondary to chronic pancreatitis due to alcohol dependence and gestational diabetes should not be considered attributable to service."

(emphasis supplied).....

It is evident from the RMB of the applicant that the applicant first contracted the disease of Acute Chronic Pancreatitis in the year 2010 and thereafter contracted the disability of Secondary Diabetes in the year 2013. It is clear from the abovementioned Para 26, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008, that Diabetes Secondary to chronic pancreatitis due to alcohol dependence should not be considered as attributable to military service.

18. Additionally, this Tribunal, while dealing with disability pension for disability of "Diabetes Mellitus Type 2", in case of ***Ex MWO Ravi Kant Gupta vs Union of India & Ors.***, in OA no. 47 of 2020 dated 06.12.2023, wherein the claim of disability pension for the disability of Diabetes Mellitus was disallowed because the applicant therein was found to be overweight.

CONCLUSION

19. In view of our aforesaid analysis and the parameters referred to herein above, and the fact that the applicant was overweight prior to the onset of the Diabetes and the correlation between Secondary Diabetes Mellitus (Old) and of

being overweight and the fact that Diabetes Secondary to Chronic Pancreatitis due to alcohol dependence should not be considered attributable to military service, we hold that the applicant is not entitled to the grant of disability element of pension. We are thus not inclined to grant any relief to the applicant and the O.A 1608/2018 stands dismissed.

There is no order as to costs.

Pronounced in the open Court on this day of ^{HM} 26 November 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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