

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

OA 164/2016

Surendra Singh Parmar ... Applicant
Versus ... Respondents
Union of India and Ors.

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. YP Singh, Advocate

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA seeking following prayers :-

- “(a) The respondents be directed to grant disability pension of @ 20% of disablement, to be rounded off at broadbanding rate of 50%, as per the existing instructions of broad banding the degrees of disablements, alongwith consequential arrears w.e.f 25.04.1985 as well as arrears of broad banding, as applicable, with 12% interest, after setting aside the impugned order dated 19.10.2012.*
- (b) Any other relief(s) which this Hon'ble Tribunal may deem appropriate, just and proper in the interest of justice and in the facts and circumstances of the case may also be granted to the applicants.”*

2. The applicant was enrolled in The Indian Navy on 12.08.1971 and was discharged on 22.06.1985 on compassionate grounds with a total qualifying service of 13 years, 10 months and 10 days. The Release Medical Board dated 30.04.1985 held that the applicant was fit to be discharged from service in low medical category S3A3 (P) for the disability- (i) ESSENTIAL HYPERTENSION @20%, as not attributable but aggravated by Naval Service for 2 years.

3. The representation of the applicant for grant of disability pension dated 01.07.2015 was rejected vide letter dated 19.10.2015 on the ground that persons who have retired/ discharged from service on or after 01.01.2006 with a disability, which is accepted as attributable to or aggravated by service and forgone lump sum compensation in lieu of disability, may be given a disability element at the time of retirement, whether voluntary or otherwise. Since the applicant had retired prematurely in June 1985, i.e. before 01.01.2006, respondents denied the disability pension to the applicant upon his voluntary retirement. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

4. The learned counsel for the applicant contends that his disability was aggravated by the stress and strain of Naval services and the applicant therefore is entitled to disability pension. The degree of disablement being 20% should also be rounded off 50% as per the extant rules. It was further contended that the Courts have repeatedly liberalised rules in award of disability pension, applicable to affected armed forces persons, irrespective of the date of retirement/cut-off date imposed by the respondent. The Hon'ble Courts further went on declaring MoD letter dated 20.09.2009 as unconstitutional and illegal, and therefore null and void to the extent that it denies pension to the persons on specious grounds that it is applicable to those persons who retired prematurely only after 01.01.2006.

5. Per Contra, learned counsel for the respondents submits that the applicant was discharged on compassionate grounds and was not sanctioned disability element of pension as per the governing rules. According to GoI letter No. 16(5)/2008/D(Pen/Policy) dated 29.09.2009, persons who were discharged on and after 01.01.2006, whether voluntary or otherwise, were granted disability element of

pension. The applicant being a pre- 2006 retiree, was not eligible for grant of disability element of pension under the aforementioned revised policy.

6. Learned counsel for respondents further contended that the applicant was not invalidated out of service and sought discharge on its own request after completion of 13 years, 10 months and 10 days. The applicant's shortfall of service was condoned and he was given service pension by the Hon'ble Tribunal vide order dated 19.11.2013. However, the grant of service pension does not convert applicants discharge from compassionate ground to normal discharge i.e. upon expiry of engagement, and the applicant cannot be made entitled to disability pension owing to para 8 of GoI policy letter No. 1(2)/97/D(penC) dated 31.01.2001 which reads as under:

"Para 8. Disability Element on retirement/discharge

8.1 to 8.3

xxx

xxx

xxx

Note. An Armed Forces Personnel who retires voluntarily/or seek discharge on request shall not be eligible for any award on account of disability. Provided that Armed Forces Personnel who is due for retirement/discharge on completion of tenure. or on completion of service limits or on completion of the terms of engagement or on attaining the prescribe age of retirement. and who seeks pre-

mature retirement/discharge on request for the purpose of getting higher commutation value of pension, shall remain eligible for disability element.”

thus, the applicant is not entitled to grant a disability pension due to policy constraints.

7. Heard the Learned counsel for the parties and perused the material available on record.

8. As far as issue of grant of disability pension to personnel retired on premature retirement or voluntary retirement is concerned, we find that the aforesaid issue is no longer res integra in view of the judgement of this Tribunal in Maj. Rajesh Kumar Bharadwaj [OA 336 of 2011; Date of Decision: 07.02.2012] wherein this Tribunal has dealt with this particular issue and held that the officers retired on premature retirement before 01.01.2006 are also entitled for grant of disability pension and the same has been implemented vide GoI MoD letter no. 16(05)/2008/D (Pension Policy) dated 19.05.2017.

9. It is also essential to advert to Para 43 of the Chapter VI of the ‘Guide to Medical Officers (Practice Military Pension, 2008) which is as under:-

“43.Hypertension – The first consideration should be to determine whether the hypertension is primary or secondary.

If (e.g. Nephritis), and it is unnecessary to notify hypertension separately.

As in the case of atherosclerosis, entitlement of attributability is never appropriate, but where disablement for essential hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. However, in certain cases the disease has been reported after long and frequent spells of service in field/HAA/active operational area. Such cases can be explained by variable response exhibited by different individuals to stressful situations. Primary hypertension will be considered aggravated if it occurs while serving in Field areas, HAA, CIOPS areas or prolonged afloat service.”

which itself thus stipulates that stress and strain is aggravated due to military service.

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 disability was assessed to be 20% which is the bare minimum for grant of disability pension in terms of Regulation 101 of the Pension Regulations for the Indian Navy, 1961 (Part-I). Since the disability was held aggravated by Naval service, the only question that arises in the above backdrop is whether the applicant is entitled to the grant of disability element of pension for life?

11. 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 Vs Union of India (Civil Appeal No. 5970 of 2019) wherein the Apex Court 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.

12. Regarding broadbanding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in Union of India Vs. Ram Avtar, Civil Appeal No. 418 of 2012 and connected cases, has observed that individuals who were 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).

13. Applying the above parameters to the case at hand we are of the view that the OA is allowed and Respondents are directed to *grant the benefit of rounding off to the applicant*

for the disability element for Essential Hypertension @20% rounded off to 50% from date of discharge of the applicant, i.e. 22.06.1985. However, as the applicant has approached the Tribunal after a considerable delay, in view of the law laid down in Union of India & Ors. v. Tarsem Singh 2009 (1) AISLJ 371, the arrears of disability pension will be restricted to commence to run from three years prior to the date of filing of the OA 164/2016.

14. No order as to costs.

15. Pending miscellaneous application(s), if any, stand closed.

Pronounced in the open Court on the 5 day of July, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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