

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

C.

OA 1646/2022

Sub Maj Ram Bilash (Retd)

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant : Mr. Bikrama Sah, Advocate

For Respondents : Mr. Kumar Gaurav, Advocate

CORAM

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

ORDER
25.01.2024

Vide separate detailed order passed today. OA stands allowed.

Learned counsel appearing for the respondents makes an oral prayer for grant of leave to appeal to appeal for impugning the aforesaid order before the Hon'ble Supreme Court. However, there being no point of law, much less any point of law of general public importance involved in the order, which warrants grant of leave to appeal, the oral prayer is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/sm/

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

OA 1646/2022

Sub Maj Ram Bilash (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Bikrama Sah, Advocate
For Respondents : Mr. Kumar Gaurav, Advocate

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has sought the following reliefs:-

- (a) To direct the respondents to grant the applicant with 30% disability element of pension and to be broad banded to 50% from the date of discharge i.e. from 01.02.2019.
- (b) To direct the respondents to pay arrears from the date of discharge i.e., from 01.02.2019 along with interest @ 12% per annum till its payment to the applicant.
- (c) Pass any other or such further order or orders as deemed fit to this Hon'ble Tribunal in order to

OA NO. 1646/2022 Sub Maj Ram Bilash (Retd)

secure the ends of justice in favour of the applicant.

2. The applicant was enrolled in the Indian Army on 07.05.1985 in the Bengal Engineering Group. He was diagnosed with disease CAD-SVD S/P PTCA to RCA on 03.02.2015 while he was posted in IHQ of MOD (Army) QMG Branch, New Delhi. The applicant contends that he was diagnosed with this disability for the first time on 03.02.2015 after more than 29 years of military service. He was placed in the medical category P3(T-24) with effect from 31.03.2015 and further his medical category was downgraded to S1H1A1P2(P)E 1 with effect from 27.06.2016. In the RMB of the applicant on 18.09.2018 at MH Allahabad, the disability was assessed at 30 per cent. However, the disability was declared neither attributable to nor aggravated by military service.

3. Representation and appeal filed by the applicant having been rejected as time barred the applicant has approached this Tribunal placing reliance on the law laid down by the Hon'ble Supreme Court in the case of *Dharamvir Singh Vs. UOI & Ors* (2013 (7) SCC 316), and *Union of India & Anr. Vs. Rajbir Singh* (Civil Appeal Nos. 2904 of 2011 etc.). Similarly, reliance is placed on an order passed by a Coordinate Bench of this Tribunal on 27.07.2023 in OA No. 1883/2022 *Cmde Jayanta Chowdhury Vs.*

UoI & Ors. to say that under similar circumstances for the ailment of Coronary Artery disease identically somewhat similar in nature relying upon the law laid down in Dharmavir Singh (supra) the benefit has been granted, therefore the applicant should also be granted the benefit claimed in the OA.

4. Respondents have filed a detailed counter affidavit and refuted the aforesaid contentions and argued that the applicant suffered the ailment which was neither attributable to nor aggravated by military service and, therefore, not eligible for grant of any disability pension. They pray for dismissal of the application.

5. Having heard learned counsel for the parties and on careful perusal of the material available on record so also the submission made on behalf of the parties, it is not in dispute that the extent of disability of the applicant has been assessed at 30 per cent which is more than the bare minimum for grant of disability pension in terms of the statutory rules and regulations which is 20 per cent.

6. That being so, the only question that warrants consideration by this Tribunal is as to whether the disability suffered by the applicant was attributable to or aggravated by military service. In this regard, in the case of Dharmvir Singh (supra) the Hon'ble Supreme Court has clearly spelt out the principle to say that any disease contracted during service is presumed to be attributable to military service if there is no

record of the applicant's ailment at the time came into the military service at the time of commissioning into the military service. Admittedly, in this case, the applicant has served the Indian Army for more than 29 years and in the absence of there being any material to show that he was suffering from the said ailment at the time of entry into service, the disability is to be considered to be attributable to military service.

7. Keeping in view the aforesaid, we see no reason by applying the same parameters to the case in hand and considering the fact that the applicant was discharged from service in low medical category on 30.01.2019 the disability must be presumed to have been arisen in the course of service which must in the absence of any reasons recorded by the Medical Board in the medical report, be taken to have been attributable to or aggravated by the military service.

8. Therefore, on an analysis of the same, we allow this OA holding that the disability of the applicant is attributable to military service and applying the principles of law laid down by the Hon'ble Supreme Court in the case of Union of India v. Ram Avtar (C.A No. 418/2012 decided on 10.12.2014), we grant disability element of pension to the applicant at the rate of 30% rounded off to 50% for life. 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 in view the law laid down in the case of Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649].

9. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order, failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

10. Pending MAs, if any, stand closed.

11. There is no order as to costs.

12. Pronounced in open Court on this the 25 day of January 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/jyoti/