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

**OA 1676/2022 with MA 2235/2022**

**Ex Sgt Rakesh Kumar Gupta** ... **Applicant**

**Versus**

**Union of India & Ors.** ... **Respondents**

**For Applicant** : Mr. Praveen Kumar, Advocate

**For Respondents** : Mr. Avdhesh Kumar Singh , Advocate

**CORAM** :

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

**O R D E R**

**MA 2235/2022**

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 204 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of ***UoI & Ors*** *Vs* ***Tarsem Singh 2009(1)AISLJ 371*** and in ***Ex Sep Chain Singh Vs Union of India & Ors (Civil Appeal No. 30073/2017*** and the reasons mentioned in the application, the MA 2235/2022 is allowed and the delay of 204 days in filing the OA 1676/2022 is thus condoned. The MA is disposed of accordingly.

2. **OA 1676/2022**

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) Quash and set aside the impugned letter 03 Dec 2021.***
>
> ***(b) Direct respondents to grant the disability element @30% and rounding off the same to 50% for life to the applicant with effect from 01 Jan 2022 i.e. the date of discharge from service with interest @ 12% p.a. till final payment is made.***
>
> ***(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.***

## BRIEF FACTS

3. The applicant was enrolled in the Indian Air Force on 19.12.2001 and discharged from service on 31.12.2021 under the clause "On fulfilling the condition of his enrolment" after rendering 20 years and 13 days of regular service. The applicant was found fit to be released in medical category A4G2(P), for the disability of "Primary Hypertension". The applicant was subjected to Release Medical Board (RMB) on 19.07.2021 whereby the percentage of the disability was

assessed @30%, however, the net qualifying percentage for the disability was nil for life as the disability was adjudged as neither attributable to nor aggravated by military service.

4. On adjudication, AOC AFRO has upheld the recommendations of RMB and rejected the disability pension claim of the applicant vide letter no. RO/3305/3/Med dated 22 November, 2021. The outcome was communicated to the air veteran vide letter NO Air HQ /99798 /1 /743998/ 12/21/DAV(DP/RMB) dated 03 December, 2021 with an advice that he may prefer an appeal to the appellate committee with six months from the date of receipt of the letter. The applicant preferred an appeal cum representation cum notice dated 14.01.2022 for the grant of disability pension. When no response was received from the respondents, the applicant has filed the instant OA. In the interest of justice, in terms of Section 21(2) (b) of the AFT Act, 2007, we take up the same for consideration.

## CONTENTIONS OF THE PARTIES

5. The learned counsel for the applicant submitted that the applicant was enrolled in Indian Air Force on 19.12.2001 and

discharged from service on 31.12.2021 under the clause "On fulfilling the condition of his enrolment" after rendering 20 years and 13 days of regular service.

6. The learned counsel for the applicant submitted that he 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.

7. The learned counsel for the applicant submitted that harsh conditions of service of military life including frequent changes in weather and social environment at different geographical locations were the main causes of stress and strain on the applicant due to which he is suffering from hypertension.

8. 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 ***Union of India and others vs. Rajbir Singh*** in Civil Appeal No. 2904/2011, ***Union of India & Ors. Vs. Ram Avtar*** in Civil Appeal no. 418

of 2012 decided on 10.12.2014 and Civil Appeal No. 5605/2010 titled ***Sukhvinder Singh vs UOI*** (2014 STPL(web) 468 SC) dated 25.06.2014.

9. Reliance was also placed on behalf of the applicant on order of this Tribunal in TA no. 48 of 2009 in WP(C) No. 6324/2007 in case of ***Nakhat Bharti Vs UOI & Ors.***, TA No 208 of 2010 (WP (C) No. 9764/2009), ***Krishna Singh Vs Union of India,*** OA No. 90 of 2014 in case ***of Ex AC (U/T) Naresh Kumar Rana Vs UOI & Ors*** dated 25.09.2014. OA no. 120 of 2021, wherein similarly situated personnel were given relief.

10. Per contra the learned counsel for the respondents submits that the Primary Hypertension disability is basically a lifestyle related disorder with its onset in peace station. The learned counsel further submitted that prior to onset of the disability, the applicant has served only in peace stations since December 2003 and the onset of the disability occurred in January 2019 and there has been no close time association of military service with onset and progression of the disability

and hence, the disability is NANA as per para 43 of GMO (Pension) 2008.

11. The learned counsel for the respondents also submitted that the applicant in addition to being overweight was a smoker and alcoholic and was advised to reduce his weight. The learned counsel for the respondents submitted the weight chart of the applicant which is to the effect:-

| Date | Type of Med Exam | Actual Weight in KG | IBW (In KG) | Over Weight % | BMI | Advice |
|---|---|---|---|---|---|---|
| 16Aug,2001 | Primary | 51 | 56.5 | - | - | - |
| 06Jan,2014 | Annual | 73 | 66 | 9 | 25.26 | - |
| 22Jul,2015 | Annual | 72 | 66 | 8.33 | 24.91 | - |
| 21Jul,2016 | Annual | 76 | 66 | 13.43 | 26.30 | - |
| 19Jul,2017 | Annual | 78 | 67 | 16.42 | 26.99 | To reduce weight by diet control and regular exercise |
| 27Jun,2018 | Annual | 78 | 67 | 16.42 | 26.99 | To reduce weight by diet control and regular exercise |
| 14Jan,2019 | Initial medical board | 78 | 67 | 16.42 | 26.99 | Freshly detected primary hypertension to reduce weight by regular physical exercise and diet control |
| 30Sep,2020 | Recategorisation | 76 | 67 | - | - | - |
| 19Jul,2021 | RMB | 76 | 67 | - | - | - |

12. The learned counsel for the respondents submit that the disability of Primary Hypertension of the applicant is directly related to his smoking habit and overweight.

13. 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 for Primary Hypertension was disallowed because the applicant therein was found to be overweight.

**ANALYSIS**

14. It is a fact that the applicant vide RMB dated 19.07.2021 has been assessed with the disability of Primary Hypertension @ 30% which has been attributed as NANA by the RMB.

15. A cursory perusal of the posting profile at Annexure A-2 reveals that the applicant was posted throughout at peace station prior to the onset of the disability which occurred whilst he was posted to Jamnagar in January 2019 which is also a peace station.

16. A perusal of the weight chart of the applicant from 2001 to 2021 alongwith his Body Mass Index (BMI), reveals that the applicant was overweight ranging from 10% to 16.42 % and the applicant was being advised regularly to reduce his weight from July 2017 till his retirement. The applicant was overweight by more than 16% even at the time of his RMB.

17. The publication released by World Health Organization titled "Hypertension" available on the internet on 16.03.2023 was examined by us and which reads to the effect:-

**"Hypertension (high blood pressure) is when the pressure in your blood vessels is too high (140/90 mmHg or higher). It is common but can be serious if not treated.**

**People with high blood pressure may not feel symptoms. The only way to know is to get your blood pressure checked.**

**Things that increase the risk of having high blood pressure include:**

- **older age**
- **genetics**
- **being overweight or obese**
- **not being physically active**
- **high-salt diet**
- **drinking too much alcohol**

**Risk factors**

- **Modifiable risk factors include unhealthy diets (excessive salt consumption, a diet high in saturated fat and trans fats, low intake of fruits and vegetables), physical inactivity, consumption of tobacco and alcohol, and being overweight or obese."**

This bulletin of WHO specifically brings out the effect of overweight/obesity on hypertension. Thus, it can be considered that the Primary Hypertension can be the result due to applicant being overweight.

18. Additionally, this Tribunal, while dealing with disability pension for disabilities 'Obesity and Hypertension' in O.A No 1656/2019, titled ***Ex HFO Gyanendra Singh vs Union of India & Ors,*** has dismissed the case on merit which was also upheld by the Hon'ble Supreme Court in Civil Appeal Diary No. 21017/2019 decided on 08.07.2019.

## CONCLUSION

19. In view of the aforesaid contentions and the parameters referred to above, and the fact that the applicant was overweight and the correlation of Primary Hypertension with weight, we are of the view that the weight of the applicant is a contributory factor towards the onset of the primary

hypertension and the applicant is thus not entitled to the grant of disability element of pension. We are not inclined to grant any relief to the applicant and the original application 1676/2022 stands dismissed.

There is no order as to costs.

Pronounced in the open Court on this day of 16 May 2024.

**(JUSTICE RAJENDRA MENON)**
**CHAIRPERSON**

**(REAR ADMIRAL DHIREN VIG)**
**MEMBER (A)**

*Pooja*