

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

OA 1679/2019 WITH MA 2607/2019

Hony Capt. Arvind Kumar (Retd.) ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Ms. Jyotsana Kaushik, Advocate

CORAM :

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

ORDER

MA 2607/2019

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh (2009(1) AISLJ 371), the delay in filing the OA is condoned.

2. MA stands disposed of.

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3. Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application seeking grant of disability pension.

4. The applicant was enrolled in the Indian Army on 23.08.1985 and retired from service on 31.08.2015. The applicant submits that for the purpose of Diabetes Mellitus

Type-II, the disability has been assessed @ 20% as is evident from the medical records.

5. 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 wherein it is clearly spelt out that any disease contracted during service is presumed to be attributable to military service, if there is no record of any ailment at the time of enrollment into the military Service, we see no reason not to allow the prayer of the applicant with regard to the aforesaid disability.

6. Furthermore, in accordance with the judgment of Hon'ble Supreme Court in *Commander Rakesh Pande v. UOI & Ors. [Civil. Appeal No. (s) 5970/2019]*, we find that the issue pertaining to grant of disability pension for DM-II has been settled. As far as reliance of the respondents on the order dated 11.09.2023 in *OA 121/2021, AFT (RB, Chennai) titled Ex Sub M Vijaykannan v. UOI & Ors.* is concerned, the said issue has been adequately settled by the judgement of the Principal Bench of this Tribunal in *OA 2176/2019 Ex JWO Krishan Kumar Tyagi v. UOI & Ors.* wherein it held that by virtue of the fact that the said judgement did not consider the judgement rendered in *Ex. Power Satyaveer Singh [C.A. 7368/2011]* as

has been upheld by the Hon'ble Supreme Court vide the verdict in *UOI & Anr Vs. Rajbir Singh [Civil Appeal 2904/2011; Date of Decision: 13.02.2015]* nor the judgement of Hon'ble Supreme Court in *Commander Rakesh Pande vs UOI & Ors., [Civil Appeal 5970/2019; Date of Decision: 28.11.2019]* wherein Hon'ble Supreme Court has upheld the judgement of this Tribunal in *Cdr Rakesh Pande vs UOI & Ors., [OA 1532/2016 AFT (PB), New Delhi; Date of Decision: 06.02.2019]* for grant of disability pension for the disability of Diabetes Mellitus, and therefore, in our considered view, the decision in *Ex Sub M Vijayakannan Vs. Union of India & Ors (supra)* is limited to the facts of that case, and cannot be held to be a binding precedent.

7. Accordingly, we allow this application and direct the respondents to grant disability element of pension to the applicant @ 20% for life which be rounded off to 50% for life from the date of retirement i.e. 31.08.2015 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. However, the arrears shall be restricted to three years prior to the date of filing of OA (24.09.2019) keeping in view the law laid down in the case of *Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649]*.

8. 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.

9. No order as to costs.

Pronounced in the open Court on the ^{28th} day of February, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Ps
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