

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

OA 168/2018

Gp Capt Girish Kumar Johri (Retd.) ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Anil Srivastava, Advocate
For Respondents : Mr. Harish V. Shankar, Advocate

CORAM

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

ORDER

Invoking Section 14 of Armed Forces Tribunal Act, 2007, the instant OA has been filed by the applicant praying for directing Respondents to grant disability pension from the date of the retirement.

2. The factual matrix of the case is that the applicant was enrolled in the Indian Air Force on 12.05.1978 and discharged on 31.12.2010. During the Release Medical Board conducted vide AFSMF-16 dated 31.05.2010 prior to his retirement, he was found to be suffering from disabilities - (i) Proliferative Diabetic Retinopathy Both Eyes @ 15-19% (ii) Primary Hypertension @ 30% & (iii) Diabetes Mellitus Type-II @ 20% for life while his disabilities were held to be Not

Attributable Nor Aggravated (NANA).

3. Learned Counsel for the applicant submits that he is pressing for disability pension only with respect to disabilities (ii) Primary Hypertension & (iii) Diabetes Mellitus Type-II and that the prayer for the grant of disability element of pension for Proliferative Diabetic Retinopathy Both Eyes is not being pressed, and the same has been recorded in our order dated 17.01.2024.

4. Placing reliance on the judgement of the Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India & Ors [2013 (7) SCC 36], learned Counsel for applicant argues that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Air Force at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

5. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), the

primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Air Force service and is assessed @ 20% or more.

6. Relying on the aforesaid provision, Learned Counsel for respondents further submits that the aforesaid disabilities of the applicant were assessed as “neither attributable to nor aggravated” by Air Force service and not connected with the Air Force service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

7. Learned counsel further argues that the weight of the applicant was 60.5 kg at the time of enrollment, and that gradually gained weight and by the time of Release Medical Board, applicant was overweight by around 15.5 kgs, purely due to dietary indiscretion, lack of exercise and a sedentary lifestyle, and his own lack of health consciousness, hence, the disabilities cannot be held attributable to or aggravated by service as he is solely responsible for his unreasonable weight gain in violation of the service requirements of maintaining physical fitness at all times.

8. 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 disabilities (ii) and (iii) was assessed to be above 20% which is the bare minimum for grant of disability pension in terms of Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I). The only question that arises in the above backdrop is whether disabilities (ii) and (iii) suffered by the applicant were attributable to or aggravated by Air Force service.

9. 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 Vs. Union of India and Ors.(supra) 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.

10. As far as the issue of applicant being overweight is to be considered, we find that at the time of onset of Diabetes Mellitus Type-II, the Actual Body Weight of the

applicant is 70 kgs as against Ideal Body Weight of 67 kgs, whereas at the time of onset of Primary Hypertension, the Actual Body Weight of the applicant is 72 kgs as against Ideal Body Weight of 67.5 kgs. In view of the above analysis, we are of the opinion that the applicant is within the permissible weight limit and therefore, the applicant being overweight at the time of RMB cannot be linked to the onset of the disabilities.


11. Accordingly, we allow this application and direct the respondents to grant disability element of pension to the applicant for Primary Hypertension @ 30% for life and Diabetes Mellitus @ 20% for life with composite assessment being 44% which be rounded off to 50% for life from the date of retirement i.e. 31.05.2010 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 (08.01.2018) keeping in view the law laid down in the case of Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649].


12. 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.

13. No order as to costs.

14. Pending miscellaneous application, if any, stands disposed of.

Pronounced in the open Court on this ^H8 day of May, 2024.


(JUSTICE RAJENDRA MENON)
CHAIRPERSON


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