

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

OA 1743/2019

Gp Capt Dilip Kumar Saluja (Retd) ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Baljeet Singh, Advocate  
For Respondents : Mr. Y.P. Singh, Advocate

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

ORDER

Invoking the jurisdiction under Section 14 of the Armed Forces Tribunal Act, 2007, the instant OA has been filed praying for the following prayers :-

*“(a) To set aside the impugned letter No. Air HQ/99797/4133/Dis/O/DAV-1(B) dated 27.08.2019 passed by the respondents.*

*(b) To direct the respondents to grant disability element of pension @40% with effect from the date of retirement for life by treating the disabilities of the applicant as attributable to or aggravated by the Air Force service.*

*(c) To direct the respondents to grant the benefit of rounding off of disability element of pension of the applicant @ 50% (40% to be rounded off to 50%) with effect from date of retirement with all consequential benefits.*

*(d) To direct the respondents to pay the due arrears of disability pension with interest @12% p.a. with effect from the date of retirement till actual payment.*

*(e) To pass such further order or orders, direction/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.”*

2. The brief facts of the case are that the applicant was commissioned in the Indian Air Force on 16.02.1987 and discharged from service on 30.11.2018 after about 31 years of qualifying service. The Release Medical Board held that the applicant was fit to be discharged from service in composite low medical category A4G4 (P) for the disabilities- (a) Diabetes Mellitus Type II (Old) @ 20% for life, (b) Primary Hypertension (Old) @ 30% for life, with composite disability 40% for life while the qualifying element for disability pension was recorded as NIL for life on account of disabilities being treated as neither attributable to nor aggravated by military service (NANA).

3. It is stated by the applicant that his initial claim for disability element of pension was rejected by the adjudicating authority vide their letter dated 08.04.2019. Against the said rejection, the applicant preferred a Legal Notice-cum-Representation dated 25.07.2019 and the same was rejected by the respondents vide their letter dated 27.08.2019. Aggrieved by the same, the applicant has approached this Tribunal.

4. Placing reliance on the judgment of the Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India and Ors. [2013 (7) SCC 36], learned counsel for applicant argues that

after thorough medical examination the applicant was commissioned into Air Force service and there was no note of any disability recorded in his service records. It is further contended that he served in the Air Force at various places in different environmental and service conditions in his prolonged service; therefore, any disability occurring during the period of his service is deemed to be attributable to or aggravated by Air Force service.

5. Per Contra, learned counsel for the respondents submits that under Regulation 37 of Pension Regulations for Air Force, 1961 (Part-I), "An officer who is retired from Air Force Service on account of a disability which is attributable to or aggravated by such service and is assessed at 20 per cent or over may, on retirement, be awarded a disability pension consisting of a service element and a disability element in accordance with the regulations in this section". In other words, disability pension is granted to those who fulfill the following two criteria simultaneously: (i) Disability must be either attributable to or aggravated by service and (ii) Degree of disablement should be assessed at 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 services that caused non-fulfillment of the criteria (i) as mentioned above and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability element of pension due to policy constraints:

7. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the extent of disabilities were assessed to be above 20% which is the bare minimum for grant of disability element of pension in terms of the Pension Regulations for the Air Force. The only question that arises in the above backdrop is, whether disability suffered by the applicant was attributable to or aggravated by Air Force service?

8. The issue of attributability of disease is no longer *res integra* in view of the verdict of the Hon’ble Apex Court in the case of Dharamvir Singh (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 commission into the Military Service.

9. Furthermore, the issue regarding the attributability of Diabetes Mellitus has been settled by the Hon’ble Supreme Court in the case of Commander Rakesh Pande Vs. Union of India (Civil Appeal No.5970 of 2019), wherein, the Apex Court has not only held that the Diabetes Mellitus is a disease which is of

permanent nature and will entitle the applicant to disability pension, but also 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.

10. Regarding broad-banding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in the case of Union of India Vs. Ram Avtar (Civil Appeal No.418 of 2012) and connected cases, has observed that individuals 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 18.04.2016 has issued instructions for implementation of the Hon'ble Supreme Court's order in the case of Ram Avtar (supra).

11. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of medical disease/disability, the disability must be presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by Air Force service.

12. Therefore, in view of our analysis, this application is

allowed and respondents are directed to grant the benefit of the disability element of pension compositely @ 40% for life [Diabetes Mellitus Type II (Old) @ 20% for life and for Primary Hypertension (Old) @ 30% for life], rounded off to 50% in view of the judgment of the Hon'ble Apex Court in the case of Union of India Vs. Ram Avtar (supra) from the date of discharge, i.e., 30.11.2018.

13. The arrears shall be disbursed to the applicant within three months from the date of receipt of a copy of this order failing which he shall earn interest @ 6% p.a. till the actual date of payment.

14. No order as to costs.

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

Pronounced in open Court on this 11 day of November, 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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