

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

OA 1749/2018

Ex Sgt Subir Dandapat Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Praveen Kumar, Advocate for
For Respondents : Mr. Y.P. Singh, Advocate

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA with the following reliefs.

(a) Quash and set aside the impugned letters dated 15.01.2018.

(b) Direct respondents to grant the disability pension @20% and rounding off the same to 50% for life to the applicant with effect from 21.01.2017, i.e., the date of discharge from service with interest @12% p.a. till final payment is made.

2. The applicant was enrolled in the Indian Air Force on 21.07.1997 and retired on 20.01.2017 after serving for 19 years 06 months and 03 days of qualifying service. The Release Medical Board dated 16.01.2017 held that the applicant was fit to be discharged from service in composite low medical category A4G2(P) for the disability - DIABETES

MELLITUS Type II @ 20% for life while the qualifying element for disability pension was recorded as NIL for life on account of disability being treated as neither attributable to nor aggravated by military service (NANA).

4. The applicant's claim for a disability pension was rejected by letter No. RO/3305/3/Med dated 29.11.2016. The rejection was communicated to the applicant by letter No. AirHQ/99798/1/780463/07/17/DAV(DP/RMB) dated 23.12.2016, with advice to appeal to the Appellate Committee within six months from the date of receipt of the letter. Subsequently, on 02.01.2018, the applicant served a legal notice to the respondents. The respondents replied to this notice by letter No. HQ/99798/1/780463/DAV/DP/CC dated 15.01.2018. Thereafter, the applicant filed OA No. 621/2018 on 03.03.2018 before this Hon'ble Tribunal. In that OA, the Tribunal directed the respondents to treat the application as an appeal, as per the order dated 27.03.2013. In compliance with the Court's direction, the respondents considered OA No. 621/2018 as the first appeal and subsequently

rejected it, as communicated to the applicant by letter No.HQ/99798/5/65/2018/780463/DP/AV-III dated 31.01.2019. Aggrieved by the aforementioned rejections, the applicant has approached this Hon'ble Tribunal for relief.

5. Placing reliance on the judgement of the Hon'ble Supreme Court in Dharamvir Singh Vs. UOI & 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 Air Force service.

6. 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.

7. Relying on the aforesaid provision, learned counsel for respondents further submits that the aforesaid disability of the applicant were assessed as “neither attributable to nor aggravated” by Air Force service and not connected with the Air Force service. Thus, the applicant is not entitled for grant of disability pension due to policy constraints.

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 disability 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). Now, the only question that arises in the above backdrop is whether the disability suffered by the applicant was attributable to or aggravated by military service.

9. The issue of attributability of disease is no longer res integra in view of the verdict of the Hon'ble Apex Court in Dharamvir Singh Vs. Union of India (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. As regards the contention of the respondents that the applicant was overweight, a scrutiny of weight chart reveals that at the time of onset of the disabilities, applicant was within the permissible weight limit.

10. Furthermore, the issue regarding the attributability of Diabetes Mellitus has been settled by the Hon'ble Supreme Court in 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.

11. Regarding broadbanding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in 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 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

12. 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, or the applicant being overweight, be presumed to have been attributable to or aggravated by Air Force service.

13. Therefore, in view of our analysis, the OA is allowed and Respondents are directed to grant benefit of disability element of pension compositely @ 20% for life (for DIABETES MELLITUS Type II @ 20%, for life), rounded off to 50% in view of judgement of Hon'ble Apex Court in Union of India Vs. Ram Avtar (supra) from the date of discharge i.e. 20.01.2017. The arrears shall be disbursed to the applicant within four months of

receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

14. Consequently, the OA 1749/2018 is allowed.

15. No order as to costs.

16. Pending miscellaneous application, if any, stands closed.

Pronounced in the open Court on 6th day of August, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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