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

90.

OA 1771/2019 WITH MA 2673/2019

Ex CH ME Prabhas Chandra Chourasia ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. K.K. Tyagi, Advocate

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

ORDER
15.02.2024

MA 2673/2019

Keeping in view the averments made in this application seeking condonation of delay in filing the OA and finding the same to be bonafide, in the light of the decision in ***Union of India and others Vs. Tarsem Singh*** [2008 (8) SCC 648], the same is allowed condoning the delay in filing the OA. MA stands disposed of.

OA 1771/2019

2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to accept the disabilities of the applicant as attributable to/aggravated by military service and grant disability pension with benefit of broad-banding with effect from the date of retirement along with all consequential benefits.

3. The applicant was enrolled in Indian Navy on 04.09.1988 and

retired on 30.09.2018 after serving more than 30 years and 27 days of qualifying service. The Release Medical Board dated 17.05.2018 held that the applicant was fit to be discharged from service in composite low medical category S2A2 (P) for the disability- Type II Diabetes Mellitus ICD E 11 @ 20% 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).

4. The claim of the applicant for grant of disability pension was rejected by Naval Pension Office C/o INS Tanaji vide letter No. PEN/600/D/LRDO 1:09/2011/171039 dated 27.09.2018 by saying that the disability of the applicant is neither attributable nor aggravated by Military service. Against this the applicant has preferred first appeal vide letter No. PN/0134/DP/1266/19 dated 29.07.2019 which was also rejected by Competent Authority. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

5. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh v. 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 Indian Navy 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.

6. Per Contra, Learned Counsel for the Respondents submits that under the provisions of the Pension Regulations 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 Military service and is assessed @ 20% or more.

7. 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 Military service and not connected with the Military service and as such, his claim was rejected; 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 the Pension Regulations for the Indian Navy. 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.

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*** (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.

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

Rakesh Pande v. 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 v. 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.

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, be presumed to have been attributable to or aggravated by Military service.

13. Therefore, in view of our analysis, the OA is allowed and Respondents are directed to grant benefit of disability element of pension @ 20% for life rounded off to 50% in view of judgement of Hon'ble Apex Court in ***Union of India versus Ram Avtar*** (supra) from the date of retirement i.e. **30.09.2018.** 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 O.A. is allowed.

15. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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