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

106.

OA 1940/2019 WITH MA 2811/2019 AND MA 5157/2023

Ex JWO Ganpat Rai Saxena ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. VS Kadian, 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
05.04.2024

MA 2811/2019

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.

MA 5157/2023

3. Vide order dated 10th April, 2023 the respondents, as a matter of last opportunities, were granted a week's time to file the counter affidavit failing which their right to file the same was ordered to be closed automatically.

4. Thereafter the matter was directed to be listed for Final Hearing on 2nd August, 2023, i.e., after alomost four months of the passing of the order closing the right to file counter affidavit, inspite thereof the respondents did not choose to file the counter affidavit and have filed this application seeking reopening the right to file the counter affidavit and to take the same on record almost after eight months of the order closing their right. However, we find no counter available on record along with this application.

5. In view of the fact that the matter has been heard finally and there is no counter affidavit on record. This application has been rendered infructous and is disposed of accordingly.

OA 1940/2019

6. 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 element of pension @40% rounded of to 50% with effect from the date of retirement of the applicant; along with all consequential benefits.

7. The applicant was enrolled in The Indian Air Force on 10.01.1981 and retired on 31.03.2018. The Release Medical Board dated 03.08.2017 held that the applicant was fit to be discharged from service in composite low medical category A4G4(P) for the disabilities - (i) CAD @ 20% for life, (ii) DIABETES MELLITUS Type II @20% 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).

8. The claim of the applicant for grant of disability pension was rejected vide letter Air\HQ/99798/1/672573/03/18/DAV(DP/RMB) dated 08.11.2017 stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service. Thereafter, the applicant served appeal cum legal notice dated 15.04.2019 which was not replied by the respondents even after expiry of more than six months. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

9. 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 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.

10. 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.

11. 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.

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

13. 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 v. 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 commission into the Military Service.

14. 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 (supra).

15. 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.

16. Therefore, in view of our analysis, the OA is allowed and Respondents are directed to ***grant benefit of disability element of pension compositely @ 50% for life*** (for CAD @20% for life, (ii) DIABETES MELLITUS Type II @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 discharge i.e. 31.03.2018.* 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.

17. Consequently, the OA 1940/2019 is allowed.

18. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Ps