

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

OA 2004/2019

Ex Sgt Shyam Sunder Yadav

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Praveen Kumar, Advocate

For Respondents : Mr. Harish V Shankar , Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

- (a) ***Quash and set aside the impugned letters dated 23 Dec 2016 and 19 July 2019.***
- (b) ***Direct respondents to grant the disability pension @ 30% for life and rounding off the same to 50% for life to the applicant with effect from 01 Dec 2016 along with interest @ 12% p.a. till final payment is made.***
- (c) ***Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.***

BRIEF FACTS

2. The applicant was enrolled in Indian Air Force on 19.11.1996 and was discharged from service on 30.11.2016.

The applicant was found fit to be released in low medical category A4(P)G3(P), for the disabilities of (i) "Primary Hypertension assessed @ 30% for life and (ii) NAFLD (Old) assessed @ 1-5%. The applicant was subjected to a Release Medical Board (RMB) on 24.05.2016 whereby the percentage of composite disabilities was assessed @ 30%, however, the net qualifying percentage for the disabilities was nil for life as both the disabilities were adjudged as neither attributable to nor aggravated by military service.

3. The applicant's claim for the grant of disability pension was rejected by the Competent Authority and the same was intimated vide letter no. Air HQ/99798/1/775879/11/16 /DAV(DP/RMB) dated 23.12.2016. The applicant preferred first Appeal against rejection of his disability pension claim, which was adjudicated and rejected by the Appellate Committee vide its letter No. Air HQ/99798/5/85/18/775879/DP/AV-III (Appeals) dated 19.07.2019. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the

interest of justice, in terms of Section 21(2)(b) of the AFT Act, 2007, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant is a "Flight Engineer" by trade and has put in 19 years 06 months and 07 days of long service in the Indian Air Force.
5. The learned counsel for the applicant submitted that he was subjected to a thorough medical examination conducted by the medical board at the time of his entry into service and was found medically fit to join the service in Indian Air Force and was posted to various Air Force units in varied geographical conditions.
6. The learned counsel for the applicant submitted that the applicant's duties were directly connected with operational activities of the Air Force and his job was very tedious and cumbersome. The learned counsel submitted that despite all hardships, the applicant continued to give his best to the organization with best of his abilities and he faced many

hardships while he was posted at various places in the Indian Air Force.

7. The learned counsel for the applicant submitted that the instant case is squarely covered by the judgments of the Hon'ble Supreme Court in the case of **Dharamvir Singh v. Union of India and others** (2013) 7 SCC 316, **Deokinandan Prasad Vs State of Bihar** AIR 1971 SC page 1409, CA No 2904 of 2011 in case of **Union of India & Ors. Vs Rajbir Singh** dated 13 February, 2015.

8. Reliance was also placed on behalf of the applicant on order of this Tribunal in TA no. 48 of 2009 in WP(C) No. 6324/2007 in case of **Nakhat Bharti Vs UOI & Ors.**, TA No 208 of 2010 (WP (C) No. 9764/2009), **Krishna Singh Vs Union of India**, OA No. 90 of 2014 in case of **Ex AC (U/T) Naresh Kumar Rana Vs UOI & Ors** dated 25.09.2014. CA no. 120 of 2021, wherein similarly situated personnel were given relief.

9. Per contra the learned counsel for the respondents submits that the Primary Hypertension disability is basically a lifestyle related disorder with its onset in peace station. The

learned counsel further submitted that prior to onset of the disability, the applicant has served only in peace stations since 1996 and the onset of the disability occurred in February 2009 and there has been no close time association of military service with onset and progression of the disability and hence, the disability is NANA as per para 43 of GMO (Military Pension) 2008.

10. The learned counsel for the respondents also submitted that the applicant was overweight and the disability of Hypertension of the applicant is directly related to his overweight condition.

11. The learned counsel for the respondents placed reliance on the orders passed by the Armed Forces Tribunal, Principal Bench at New Delhi in case of **Col (Mrs.) Dropadi Tripathi (Retd.) Vs Union of India & Ors**, in OA 1843 of 2018, decided on 13.04.2023, wherein the claim of disability pension for Primary Hypertension was disallowed because the applicant therein was found to be overweight.

ANALYSIS

12. In so far as the disability of NAFLD (Old) is concerned, the said disability is assessed @1-5% which is below 20% and does not fulfill the twin criteria as per Rule 153 Pension Regulations for IAF, 1961 (Part-I) and hence is not admissible.

13. It is a fact that the applicant vide RMB dated 24.05.2016 has been assessed with the disability of Primary Hypertension @ 30% which has been attributed as NANA by the RMB.

14. A perusal of the Part-II Medical Examination of the RMB reveals that the applicant was overweight at the time of the RMB as the actual weight of the applicant has been indicated as 85 kg against an ideal weight of 71 kg. Thus, at the time of RMB, the applicant was overweight by 14 kg (19.7% over ideal weight) which indicates that the applicant failed to maintain the ideal weight which can be managed by regular exercise and restricted diet.

15. There are various medical reviews available suggesting that those who are overweight or obese, are at risk of having high blood pressure in life. The publication released by World Health Organization titled "Hypertension" available on the

internet on 16.03.2023 was examined by us and which reads to the effect:-

“Hypertension (high blood pressure) is when the pressure in your blood vessels is too high (140/90 mmHg or higher). It is common but can be serious if not treated.

People with high blood pressure may not feel symptoms. The only way to know is to get your blood pressure checked.

Things that increase the risk of having high blood pressure include:

- older age
- genetics
- being overweight or obese
- not being physically active
- high-salt diet
- drinking too much alcohol

Risk factors

- Modifiable risk factors include unhealthy diets (excessive salt consumption, a diet high in saturated fat and trans fats, low intake of fruits and vegetables), physical inactivity, consumption of tobacco and alcohol, and being overweight or obese.”

This bulletin of WHO specifically brings out the effect of overweight/obesity on hypertension. Thus, it can be considered that the Primary Hypertension can be the result due to applicant being overweight.

16. Additionally, this Tribunal, while dealing with disability pension for disabilities ‘Obesity and Hypertension’ in O.A No 1656/2019, titled **Ex HFO Gyanendra Singh vs Union of India & Ors**, has dismissed the case on merit which was also

upheld by the Hon'ble Supreme Court in Civil Appeal Diary No. 21017/2019 decided on 08.07.2019.

CONCLUSION

17. In view of the aforesaid contentions and the parameters referred to above, and the fact that the applicant was overweight and the correlation of Primary Hypertension with weight, we are of the view that the weight of the applicant is a contributory factor towards the onset of the primary hypertension and the applicant is thus not entitled to the grant of disability element of pension. We are not inclined to grant any relief to the applicant and the original application stands dismissed.

18. There is no order as to costs.

Pronounced in the open Court on this day of 18th April 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

Pooja

OA 2004/2019
Ex Sgt Shyam Sunder Yadav

8 of 8