

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

OA 2046/2018

EX CHME Kripal Singh ... Applicant  
Versus  
Union of India & Ors ... Respondents

For Applicant : Mr. Ved Prakash, Advocate  
For Respondents : Dr. V.S. Mahndiyar, 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 praying to direct the respondents to accept the disabilities of the applicant as attributable to/aggravated by Naval Service and round off disability element of pension to 50% with effect from the date of discharge of the applicant; along with all consequential benefits.

2. The applicant was enrolled in Indian Navy on 05.05.1989 and was discharged from service on 31.05.2012 after serving for more than 23 years. The Release Medical Board dated 31.05.2012 held that the applicant was fit to be discharged from service in low medical category S2A2 (P) for the disability 'GRAVES DISEASE WITH POST RADIOABLATIVE HYPOTHYROIDISM' @30% for life

and recommended the disability as neither attributable to nor aggravated (NANA) by Naval Service.

3. The claim of the applicant for grant of disability pension was rejected vide letter No. PEN/600/D/LRDOI:05/2012/ 173310N dated 25.06.2012 stating that the disability of the applicant is not attributable/aggravated by Naval Service. The applicant sent first appeal against rejection of disability pension on 13.11.2018, which was rejected vide letter no. PN/1034/DP/1186/18 dated 28.11.2018 stating that the stipulated period of five years has already been elapsed. Aggrieved by the aforesaid rejection, the applicant has filed this OA.

4. Placing reliance on the judgment of the Hon'ble Supreme Court in Dharamvir Singh Vs. UOI & Ors [2013 (7) SCC 36], learned counsel for the 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 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 Naval Service.

5. Per Contra, learned counsel for the respondents submits that under the provisions of Rule 101 of the Pension Regulations for the Indian Navy, 1964 (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 Naval Service.

6. Relying on the aforesaid provision, learned counsel for the respondents further submits that the aforesaid disabilities of the applicant were assessed as “neither attributable to nor aggravated” by naval service and not connected with the Naval Service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

7. We have heard the learned counsel for the parties and perused the material available on record. Before proceeding to adjudicate the issue under consideration, it is pertinent to refer to Army Order 16036/ RMB/ IMB/ DGAFMS/ MA (Pens) dated 20.05.2019, dealing with Award Of Entitlement And Assessment Of Hypothyroidism And Obesity, the relevant portion of which is produced as under:

*xxxxxx*

*a) Hypothyroidism:*

*(i) Attributability and Aggravation:*

- *Hypothyroidism may be considered attributable if due to post-therapeutic or post-diagnostic intervention.*
- *Aggravation may be conceded in all cases of Primary Autoimmune Hypothyroidism.*

8. On a perusal of the aforesaid provision of Guide to Medical Officers, 2008, we find that the Hypothyroidism can be considered as attributable due to post-therapeutic or post-diagnostic intervention, which is the case with the applicant's disability as his disability has arisen post Radio ablative Intervention, and thus, it can be safely concluded that the disability of the applicant is attributable to service and since no cogent reasons were given in the records as to why the said disability is not attributable, the disability, in this particular case in absence of specialized medical opinion can be held as attributable.

9. We find resonance in the verdict of the Hon'ble Apex Court in *Dharamvir Singh Vs. Union of India* (supra), wherein it is clearly spelled 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. 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 Naval Service.

11. Regarding broad banding 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. Therefore, in view of our analysis, the OA is allowed and respondents are directed to grant benefit of disability element of pension for 'GRAVES DISEASE WITH POST RADIOABLATIVE HYPOTHYROIDISM' @30% rounded off to 50% for life in view of the judgement of Hon'ble Apex Court in Union of India Vs. Ram Avtar (supra) from the date of filing of this OA. However, in view of the delay in filing this OA, the arrears shall be restricted to three years prior to filing of OA. [Date of filing of OA: 10.12.2018]. 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.

13. Consequently, the O.A. 2046/2018 is allowed.
14. No order as to costs.
15. Pending miscellaneous application, if any, stands closed.

Pronounced in the open Court on 24 day of July, 2024.

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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

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