

1

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

OA 2083/2023

WO Chitoor Mohanarangam

Bharath (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Nawneet Krishna, Advocate

For Respondents : Ms. Jyotsna Kaushik, 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, of the Armed Forces Tribunal Act, 2007 the applicant has filed this application and the reliefs claimed in Para 8 read as under:

- (a) *To quash and set aside the RMB proceedings and Impugned Order to the extent deny the grant of disability element of pension to the applicant;*
- (b) *To direct the respondents to grant the disability element of pension @ 30% broad-banded to 50% with interest @ 12% p.a wef date of discharge, by treating the disabilities as attributable to and/ or aggravated by military service.*
- (c) *To pass any other Order(s) or/and direction(s) in favour of the applicant which may deem just*

1 of 9

***and proper under the facts and circumstances
of the case in the interest of justice.***

BRIEF FACTS

2. The applicant was enrolled in Indian Air Force on 22.10.1990 and discharged from service on 31.10.2022 under the clause "On fulfilling the condition of his enrolment" after rendering 32 years and 09 days of regular service. The applicant was found fit to be released in medical category A4G2(P), for the disability of Primary Hypertension (Old) @ 30% . The applicant was subjected to a Release Medical Board (RMB) held on 14.12.2021 whereby the percentage of composite disability was assessed @ 30% for life, however, the net qualifying percentage for the disability pension was nil for life as the disability was adjudged as neither attributable to nor aggravated by military service.

3. On adjudication, the AOC AFRO upheld the recommendations of the RMB and rejected the disability pension claim which was communication to the applicant vide letter no. Air HQ /99798 /1/737266/10 /22 /DAV (DP/RMB)

dated 31.10.2022 with an advice that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of letter. Applicant's 1st Appeal cum Legal Notice dated 30.12.2022 against rejection of disability pension could not be processed being it third party case which neither contain individual's signature nor any authorization from the applicant for processing his case on his behalf. The appeal was returned to the concerned advocate vide letter no. Air HQ/99798/5/1st Appeal/DP/AV-III dated 31.05.2023. Hence, the applicant has filed the instant OA. In the interest of justice, in terms of Section 21 (2) (b) 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 joined the IAF on 22.10.1990 and was discharged from the service on 31.10.2022 in the rank of WO after rendering 32 years and 09 days of long service in the Indian Air Force during which he suffered with the said disability.

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 and climatic conditions.
6. The learned counsel for the applicant submitted that in addition to conditions of service frequent changes in weather and social environment at different geographical locations were the main causes of stress and strain on the applicant.
7. The learned counsel for the applicant placed reliance on the verdict of the Hon'ble Supreme Court of India in case of **Dharamvir Singh Vs Union of India & Others** (Civil Appeal No. 4949/2013); (2013 7 SCC 316, **UOI & Ors. Vs. Rajvir Singh**,(2015) 12 SCC 264 and **UOI & Ors Vs. Angad Singh Titaria**,(2015) 12 SCC 257
8. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, being an Expert Body, found the

disabilities as being “Neither Attributable to Nor Aggravated by Military Service”. The learned counsel further contended that the applicant had a personal history of being a smoker for 25 years and was found to be overweight since 2015. The disability of the applicant arose due to his smoking habits and his being overweight. While rejecting the disability element of pension to the applicant, the respondents have given detailed reasons for not assessing the disabilities as attributable to or aggravated by military service as the applicant had no exceptional stress and strain of service and the disabilities were conceded as neither attributable to nor aggravated by military service in terms of Para 43 of Chapter VI of Guide to Medical Officers (Military Pensions) 2002, amendment 2008. The learned counsel submitted that since the applicant’s disability do not fulfill one of the twin conditions in terms of Regulation 153 of the Pension Regulations for the Air Force, 1961 (Part-I) as the same were assessed as neither attributable to nor aggravated by military service, and

therefore, the applicant is not entitled to the grant of the disability pension and the OA thus, deserved to be dismissed.

ANALYSIS

9. It is a fact that the applicant vide RMB dated 14.12.2021 has been assessed with the disability of Primary Hypertension @ 30% which has been attributed as NANA by the RMB.

10. A perusal of the Part-V Medical Examination of the RMB reveals that the applicant was slightly overweight even at the time of the RMB as the actual weight of the applicant has been indicated as 75 KG against an ideal weight of 68 KG. Thus, at the time of RMB, the applicant was overweight by 7kg (9.33% above ideal weight).

11. It is however essential to note that the applicant was a smoker for 25 years. It is therefore essential to advert to scientific literature available in public domain such as <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8619602/> published by National Library of Medicine on 10.11.2021 accessed on 17.01.2024 which read as under:-

“In this way, the onset of hypertension is affected by not just one factor but multiple factors, including both alcohol intake and smoking.

Many past studies identified alcohol as one factor that worsens hypertension. In these studies, a dose-response relationship between alcohol consumption and hypertension was specifically noted. On the other hand, the relationship between smoking and hypertension was not found to be significant. However, a transient increase in blood pressure while smoking cigarettes, as well as findings supportive of a causal association of smoking burden with a higher resting heart rate, were noted, despite how no direct relationship between smoking and hypertension has been documented. Furthermore, numerous studies on the risks of cardiovascular disease (stroke and heart disease) have found that alcohol and smoking raise by several fold the risk of cardiovascular diseases. In these studies, alcohol, smoking, and hypertension are all factors similarly affecting the outcome of cardiovascular diseases. Some previous studies have investigated the relationship between hypertension and both alcohol and smoking, but none, to our knowledge, have focused on the synergistic health effects of the two together on hypertension.”

12. The applicant was a smoker for a considerable period of 25 years whilst in service and contracted with the said disability in 2020. Therefore, it is safe to say that smoking could be one of the reasons for occurrence of the said disability which cannot be overlooked. In the instant case, along with the RMB proceedings

the respondents have placed on record the Medical Case Sheet *qua* applicant which reflects the personal history of the applicant to the effect that the applicant has a history of smoking vide AFMSF -7A dated 13.11.2020.

13. In the instant case, since the applicant is a smoker, therefore the onset of the disability in the instant case cannot be held to be attributable to or aggravated by military service in view of the personal history apparently given by the respondents that he has a history of being a smoker.

14. Thus, in view of the circumstances of the instant matter, we do not find any infirmity in the opinion of the Release Medical Board denying the disability element of pension to the applicant *qua* the disability of Primary Hypertension for it being neither attributable to nor aggravated by military service and the applicant thus is not entitled to the grant of the disability element of pension for which the applicant is himself responsible being a smoker.

CONCLUSION

15. In view of the aforesaid analysis and the parameters referred to above, there being no infirmity in the opinion of the RMB, we hold that the applicant is not entitled to any relief and thus the OA 2083/2023 stands dismissed.

16. There is no order as to costs.

Pronounced in the open Court on this 22nd day of July, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

Pooja