

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
OA 2142/2019

Smt. Swapna Deb Roy Wd/o
Hav Tamal Baran Dev Roy (Deceased) ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. S.S. Pandey, Advocate
For Respondents : Mr. V.S. Mahndiyan, Advocate

Dated: March 22, 2024

CORAM :

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, the Hav Tamal Baran Dev Roy (now deceased) has filed this application seeking grant of disability pension. During the pendency of this OA, the soldier expired on 23.05.2022, and an application was filed for substitution of Legal Representative, which was allowed by our order dated 13.02.2024.

2. The soldier was enrolled in the Indian Army on 02.08.1963 and retired from service on 31.08.1987. The applicant submits that for the purpose of disabilities- Diabetes Mellitus Type-II, and IHD (Clinical), the disabilities have been assessed @6-10% for 2 years and @ 20% for 2 years respectively as is evident from the medical records.

3. As far as the disability of Diabetes Mellitus Type-II is concerned, the minimum assessment of the disability cannot be less than 20% in terms of MoD Letter No. 16036/DGAFMS/MA

(Pens)/Policy dated 20.12.2012. Grant of Disability Pension being a beneficial provision, no reasoning has been affirmed by the Respondents as to why the deceased soldier should not be granted the benefit of this policy letter, though discharged prior to issuance of this letter.

4. Keeping in view the consistent stand taken by this Tribunal based on the law laid down by the Hon'ble Supreme Court in the case of Dharamvir Singh v. Union of India and others (2013) 7 SCC 316 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 enrollment into the military Service, we see no reason not to allow the prayer of the applicant with regard to the aforesaid disability.

5. Furthermore, in accordance with the judgment of Hon'ble Supreme Court in Commander Rakesh Pande v. UOI & Ors. [Civil Appeal No. (s) 5970/2019], we find that the issue pertaining to grant of disability pension for DM-II as well as the question of disabilities of permanent nature to be deemed to have been assessed for life, has been settled.

6. As far as reliance of the respondents on the order dated 11.09.2023 in OA 121/2021, AFT (RB, Chennai) titled Ex Sub M Vijaykannan v. UOI & Ors. is concerned, the said issue has been adequately settled by the judgement of the Principal Bench of this Tribunal in OA 2176/2019 Ex JWO Krishan Kumar Tyagi v. UOI & Ors. wherein it held that by virtue of the fact that the said

judgement did not consider the judgement rendered in *Ex. Power Satyaveer Singh [C.A. 7368/2011]* as has been upheld by the Hon'ble Supreme Court vide the verdict in *UIO & Anr Vs. Rajbir Singh [Civil Appeal 2904/2011; Date of Decision: 13.02.2015]* nor the judgement of Hon'ble Supreme Court in *Commander Rakesh Pande vs UIO & Ors., [Civil Appeal 5970/2019; Date of Decision: 28.11.2019]* wherein Hon'ble Supreme Court has upheld the judgement of this Tribunal in *Cdr Rakesh Pande vs UIO & Ors., [OA 1532/2016 AFT (PB), New Delhi; Date of Decision: 06.02.2019]* for grant of disability pension for the disability of Diabetes Mellitus, and therefore, in our considered view, the decision in *Ex Sub M Vijayakannan Vs. Union of India & Ors (supra)* is limited to the facts of that case, and cannot be held to be a binding precedent.

7. Accordingly, we allow this application and direct the respondents to grant disability element of pension to the applicant @ 36% for life (For Calculation of Assessment: DM-II @20% & IHD @16%) which be rounded off to 50% for life from the date of retirement i.e. 31.08.1987 in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of *Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012)* decided on 10.12.2014. However, the arrears shall be restricted to three years prior to the date of filing of OA (07.11.2019) keeping in view the law laid down in the case of *Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649]*.

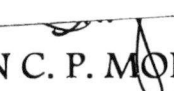
8. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order, failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

9. No order as to costs.

10. MA 2206/2023 already disposed of vide order dated 13th February, 2024.

Pronounced in an open Court on 22 day of March, 2024


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


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

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