

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
OA 2163/ 2022

Col Kirti Kumar Sharma (Retd.) ... **Applicant**
Versus
Union of India and Ors. ... **Respondents**

For Applicant : Mr. Manoj Kumar Gupta, Advocate
For Respondents : Ms. Barkha Babbar, Advocate

CORAM

HON'BLE MS. 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 military service and grant disability element of pension @30% rounded off to 50% with effect from the date of retirement of the applicant; along with all consequential benefits.

2. The applicant was commissioned in the Indian Army on 10.08.1987 and retired on 30.06.2020. The Release Medical Board dated 03.02.2020 held that the applicant was fit to be discharged from service in composite low medical category for the disabilities - (i) PRIMARY HYPERTENSION @30% for life,

(ii) OBESITY @5% with composite disability @ 30% for life while the qualifying element for disability pension was recorded as NIL for life on account of disability being treated as neither attributable to nor aggravated by military service (NANA).

3. The initial claim of the applicant for grant of disability pension was adjudicated by the competent authority and rejected vide letter 1331/V-00417A/RVC/MP-6E/137/2020/AG/PS-4(Imp-1) dated 06.03.2020 stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service. Subsequently, applicant preferred first appeal dated 29.06.2020, which was again rejected vide letter No. 1331/V-00417A/RVC/MP-6(E)/137/2020/Ist Appeal/AG/PS-4(Imp-II) dated 02.12.2020. Thereafter, the applicant preferred second appeal dated 03.05.2021, which was rejected by the Competent Authority vide letter No. B/38046A/233/2022/AG/PS-4 (2nd Appeal) dated 02.08.2022. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

4. 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 Indian Army 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.

5. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Regulation 81 and 53(a) of the Pension Regulations for the Army, 2008, 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 military service and is assessed @ 20% or more.

6. 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 military service and not connected with the military service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

7. 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 (i) was assessed to be above 20% which is the bare

minimum for grant of disability pension in terms of Regulation 81 and 53(a) of the Pension Regulations for the Army, 2008. However disability (ii) was assessed to be less than 20%, warranting no interference.

8. It is relevant to note that the applicant is constantly overweight with his actual weight being 94 kgs as against the Ideal weight of 71 Kgs, with the same trend visible before the onset of both the disabilities under consideration. We find that the applicant is not reducing the weight even after slew of directions advised by the medical experts including brisk walking, jogging and reducing the weight. We observe that the weight has not been reduced, thereby, clearly showcasing that onset of disability is the result of the applicant being alarmingly overweight and therefore, the argument that the applicant suffered the disability due to stress and strain of the service is wholly unfounded on the simple reasoning that the organisation cannot be held liable for the own actions of the applicant.

9. We cannot shy away from the fact, that the disability - Primary Hypertension is due to interplay of metabolic and lifestyle factors and failure in maintaining the ideal body weight which can be managed by regular exercise and restricting diet, and the fact that the applicant is alarmingly overweight signifies

that the applicant has remained obese over a period of time, thereby, himself inviting the disability, and in such a case, it would be grossly unjustified for us to ignore the aforesaid facts.

10. Applying the above parameters to the case at hand, we are of the view with respect to disability - Primary Hypertension, there is no denial from the fact that if the claimant is himself not responsible enough to control the factors which are well within his voluntary control, he cannot be allowed to garner benefit of such beneficial schemes and provisions.

11. Therefore, in view of our analysis, the OA is liable to be dismissed.

12. Consequently, the OA 2163/2022 is dismissed.

13. Pending miscellaneous application, if any, stands closed.

14. No order as to costs.

Pronounced in the open Court on 18 day of March, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

Ps
OA 2163/2022