

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

OA 2168/2019

Ex MWO Jaivir Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate for
Mr. VS Kadian, Advocate

For Respondents : Mr. Satya Ranjan Swain, 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 letter no air HQ /99798 /1 /627447 /04 /19/DAV(DP/RMB) dated 02.11.2018.*
- And/or*
- (b) *Direct the respondent to treat the disability of the applicant as attributable to or aggravated by military service and grant him*

disability element of pension with the benefit of broad banding.

(c) *Direct respondents to pay the due arrears of disability element of pension with interest @ 12% p.a from the date of retirement with all the consequential benefits.*

(d) *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 30.01.1982 and discharged from service on 30.04.2019 under the clause on "On attaining the age of superannuation" after rendering total 37 years and 89 days of regular service. The applicant was found fit to be released in low medical category A4G2(P), for the disability of "Primary Hypertension (Old) assessed @ 30%. The applicant was subjected to a Release Medical Board (RMB) on 28.05.2018 whereby the percentage of composite disability was assessed @ 30%, however, net qualifying percentage for disability was nil for life as the

disability was adjudged as neither attributable nor aggravated to military service

3. On adjudication, AOC AFRO has upheld the recommendations of RMB and rejected the disability pension claim of the applicant vide letter no. RO/3305/3/Med dated 30.10.2018. The outcome was communicated to the air veteran vide letter No. Air HQ/99798/1/627447/04/19/DAV/DP/RMB dated 02.11.2018 with an advice that he may prefer an appeal to the appellate committee with six months from the date of receipt of the letter. Aggrieved by the rejection of his claim for disability pension by the respondents, the applicant had filed the instant OA. In the interest of justice thus, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT, Act 2007.

CONTENTION OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant joined the IAF on 30.01.1982 and was discharged from the service on 30.04.2019 in the rank of MWO after

rendering 37 years and 89 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 on successful completion of his training without any medical problem, the applicant was posted to various Air Force units in varied climatic and geographical conditions.

6. The learned counsel for the applicant submitted that in addition to conditions of service, dietary compulsions of military life including 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 submitted that the instant case is squarely covered by the judgements of the Hon'ble Supreme Court in the case of **Dharamvir Singh v. Union of India and others** (2013) 7 SCC 316, CA No. 5605/2010 in case of **Sukhvinder Singh vs Union of India** 2014(14) SCC 364, 2014(8) SCALE 619, 2015(3) SLR 5 dated 25.06.2014, and CA No 2904 of 2011 in case of **Union of**

India & Ors. Vs Rajbir Singh dated 13 February, 2015, wherein similarly situated personnel were given relief.

8. Per contra the learned counsel for the respondents submits that the Primary Hypertension disability is basically a lifestyle related disorder and in the case of the applicant it had 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 1982 and the onset of the disability occurred in September 2008 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.

9. The learned counsel for the respondents also submitted that the applicant was overweight and was advised to reduce his weight. The learned counsel for the respondent submitted the weight chart of the applicant which reads as under:-

Date	Type of Med Exam	Actual Weight in KG	IBW (In KG)	Advice
25 Jan 82	Primary	63	66	-
1 Jul 00	Extension	88	76.5	-
25 Feb	Annual	82	75	-

03				
08 Aug 05	Annual	83.5	75	-
08 Jun 06	Extension	83	75	-
06 Sep 08	Initial Med Board	89	77	Reduce body weight 3-4 kg/ month
10 Aug 09	Recat	88	77	-
08 Sep 10	Recat	89	76	-
12 Sep 11	Extension	91	75	Regular physical exercise to reduce body weight
10 Sep 12	Recat	97	75	Reduce body weight by diet control/ exercise
03 Oct 13	Recat	96	75	Reduce body weight by diet control/ exercise
19 Sep 14	Recat	97	75	Weight reduction through diet and exercise.
02 Mar 15	Recat	96	75	Reduce weight by moderate exercise.
21 Mar 16	Recat	92	75	Reduce weight by regular exercise and dietary control.
28 May 18	Release	89	75	-

10. The learned counsel for the respondents submit that 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 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. It is a fact that the applicant vide RMB dated 17.10.2008 has been assessed with the disability of Primary Hypertension @ 30% which has been attributed as NANA by the RMB.

13. A perusal of the Part-II Medical Examination of the RMB reveals that at the time of the onset of the disability in September 2008, the applicant's actual weight was 89 kg against an ideal body weight (IBW) of 77 kg thereby he was overweight by 15%. The applicant was overweight even at the time of the RMB as the actual weight of the applicant has been indicated as 89 kg against an ideal weight of 75 kg. Thus, even at the time of RMB, the applicant was overweight by 14 kg (18.6%) which indicates that the applicant failed to maintain the ideal weight which can be managed by regular exercise and restricted diet.

14. The publication released by World Health Organization titled "Hypertension" assessed through 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.

15. 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.

16. Furthermore, this Tribunal, while dealing with disability pension for disability of "Primary Hypertension", in case of **WO Satpal Singh (Retd. vs Union of India & Ors.** , in OA no. 2097/2021 dated 06.12.2023, wherein the claim of disability pension for the disability of Primary Hypertension was disallowed because the applicant therein was found to be overweight.

CONCLUSION

17. In view of the aforesaid contentions and the parameters referred to above, and the fact that the applicant was overweight prior to the onset of the hypertension and the correlation of Primary Hypertension and overweight we are of the view that weight of the applicant is a contributory factor toward the onset of the primary hypertension and the applicant is 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 ^{ed} 22 October 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

Pooja