

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

B.

OA 2191/2019

Ex Sgt Shiv Jee Singh Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
28.03.2024

Vide our orders of even date, we have allowed the OA. Faced with the situation, learned counsel for the respondents makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007, to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

COURT NO. 1
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115.

OA 2191/2019

Ex Sgt Shiv Jee Singh	Applicant
Versus		
Union of India & Ors.	Respondents
For Applicant	:	Mr. Virender Singh Kadian, Advocate
For Respondents	:	Mr. Anil Gautam, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
19.03.2024

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 pension @20% rounded off to 50% with effect from the date of retirement of the applicant; along with all consequential benefits.

2. The applicant was enrolled in the Indian Air Force on 29.09.1991 and retired on 30.09.2017. The Release Medical Board held that the applicant was fit to be discharged from service in low medical category for the disabilities – viz. (a) DIABETES

MELLITUS Type II @ 20% and (b) RT Chronic Otitis Media (OPTD) assessed @ 15-19% for life and compositely assessed @ 40% for life while the qualifying element for disability pension was recorded as NIL for life on account of both the disabilities being treated as neither attributable to nor aggravated by military service (NANA). 3. The claim of the applicant for grant of disability pension was rejected vide letter No. Air HQ/99798/1/746537/09/17/DAV(DP/RMB) dated 19.07.2018 stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service. Subsequently, the first appeal was preferred by the applicant on 28.01.2019. However, the same has not disposed of even after elapse of six months till date, aggrieved by this, 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]*, Ld. 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 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, Ld. Counsel for the Respondents submits that under the provisions of Regulation 81 of the Pension Regulations for the Army, 2008 (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 military service and is assessed @ 20% or more.

6. Relying on the aforesaid provision, Ld. Counsel for the 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 view that it is not in dispute that the extent of disability ID (i) Diabetes Mellitus Type II was assessed to be 20% which is the bare minimum for grant of disability pension in terms of Regulation 81

and 37 of the Pension Regulations for the Army, 2008 (Part-I). In so far as Disability ID (ii) Chronic Otitis Media which was assessed @ 15-19% is concerned, the assessment for the said disability does not pass the test for the grant of disability pension as the RMB assessed it @ 15-19% which is less than 20% required for the grant of Disability pension as per Regulation 81 & 37 of Pension Regulations for the Army 2008 (Part-I). The only question that arises in the above backdrop is whether disability i.e. Diabetes Mellitus Type II suffered by the applicant was attributable to or aggravated by military service.

8. The issue of attributability of disease is no longer res integra in view of the verdict of the Hon'ble Apex Court in *Dharamvir Singh v. Union of India (supra)*, 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 commission into the Military Service.

9. Furthermore, the issue regarding the attributability of Diabetes Mellitus has been settled by the *Hon'ble Supreme Court in Commander Rakesh Pande v. Union of India (Civil Appeal No. 5970 of 2019)* wherein the Apex Court has not only held that the

Diabetes Mellitus is a disease which is of permanent nature and will entitle the applicant to disability pension, but also observed that in case where the disability is of permanent nature, the disability assessed by the Medical Board shall be treated for life and cannot be restricted for specific period.

10. Regarding broadbanding benefits, we find that the *Hon'ble Supreme Court in its order dated 10.12.2014 in Union of India v. 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).

11. 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 air force service.

12. Therefore, in view of our analysis, the OA is allowed and Respondents are directed to grant benefit of disability element of pension @ 20% for life for the disability of Diabetes Mellitus Type II rounded off to 50% for life in view of judgement of Hon'ble Apex Court in Union of India versus Ram Avtar (supra) from the date of his discharge i.e. 30.09.2017. 13. 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.

14. Consequently, the OA is allowed.

15. No order as to costs.

16. Pronounced in the open court on this 28 day of March 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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