

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

OA 2282/2019

JWO Afaque Ahmed (Retd.) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate

For Respondents : Mr. Y P Singh, 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) To direct the respondents to grant the disability pension @ 50% broad banded to 75% alongwith arrears by treating the disabilities as attributable and aggravated by the military service.**
- (b) To direct the respondents to pay the due arrears of disability pension with interest @10% p.a with effect from the date of retirement with all the consequential benefits.**
- (c) To pass such orders, direction/ directions as this Hon'ble Tribunal**

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may deem fit and proper in accordance with law.

BRIEF FACTS

2. The applicant was enrolled in Indian Air Force on 30.09.1980 and discharged from service on 31.01.2019 under the clause on "On attaining the age of superannuation" after rendering total 38 years and 124 days of regular service. The applicant was found fit to be released in low medical category A4G2(P), for the disabilities of (i) "Primary Hypertension (Old) assessed @ 30%, (ii) Obesity (Old) assessed @ 1-5% and (iii) Diabetes Mellitus Type-II (Old) assessed @ 20%. The applicant was subjected to a Release Medical Board (RMB) on 08.06.2018 whereby the percentage of composite disabilities was assessed @ 50%, however, the net qualifying percentage for the disabilities was nil for life as all the disabilities were adjudged as neither attributable to nor aggravated by 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 /99789 /1 /662610 /O1 /19 /DAV(DP /RMB) dated 14.11.2018 with an advice that he may prefer an appeal to the appellate committee with six months from the date of receipt of the letter.

4. The applicant's first appeal dated 19.05.2019 was still under consideration by the Appellate Committee at the time of filing O.A on 04.12.2019. Aggrieved by the non disposal of the first appeal, the applicant has filed the present OA. In the interest of justice, in terms of Section 21(2)(b) the AFT Act, 2007, we take up the same for consideration.

CONTENTION OF THE PARTIES

5. The learned counsel for the applicant submitted that the prayer made in the present OA is confined to the grant of disability element of pension in relation to the disability of Primary Hypertension (old) @30% for life only and the prayers made for grant of disability element of pension in relation to

disabilities of Obesity (Old) and Diabetes Mellitus Type-II (Old) are not pressed.

6. The learned counsel for the applicant submitted that the applicant is a "MT Fitter" by trade and his put in 39 years of long service in the Indian Air Force.

7. 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.

8. 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.

9. The learned counsel for the applicant placed reliance on the orders passed by Armed Forces Tribunal in case of **Maj. Gen AK Singh (Retd.) Vs Union of India & Ors**, in OA 1479

of 2018 & **Ex WO Sridam C Das (Supra)**, wherein relief was granted to the similarly, situated applicant in that case.

10. The learned counsel for the applicant also 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.

11. 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 1980 and the onset of the disability occurred in May 2006 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.

12. 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)	Over Wt %	BMI	WHR	Advice
28 Aug 80	Primary	55	-	-	-		-
14 Jan 99	Extension	76	62	-	-		-
26 Jul 02	Extension	74	68	-	-		
23 Apr 03	Annual	74	68	08	-		
25 Jun 04	Annual	73	68	10	-		
04 Oct 05	Annual	77	65		-		
22 May 06	Initial Med Board	80	69		26.42	0.87	-
30 Aug 07	Extension	79	69				-
03 Jan 08	Recat	79	69	14.4	26.3	0.89	-
21 Jan 09	Recat	80	68.5	16.7	26.3	0.89	
13 Jan 10	Recat	80	-	16.7	26.3	0.89	-
10 Jan 11	Recat	85	68.5			0.9	-
11 Mar 13	Recat	85	69	23.18	28.07	0.91	To reduce weight by diet Control and regular exercise
19 Mar 15	Recat	85	69		28.07	0.9	
04 Apr 16	Recat	86	69		28.4	0.89	

03 Apr 17	Recat	86	69		28.4	0.89	
09 Jun 18	Release	92	69		30.38	0.90	

13. The learned counsel for the respondents submit that the disability of Hypertension of the applicant is directly related to his overweight condition.

14. 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

15. It is a fact that the applicant vide RMB dated 08.06.2018 has been assessed with the disability of Primary Hypertension @ 30% which has been attributed as NANA by the RMB.

16. A perusal of the Part-II Medical Examination of the RMB reveals that at the time of the onset of the disability in May

2006, the applicant's weight was 80 kg against an ideal body weight (IBW) of 69 kg thereby he was overweight by 16%. The applicant was overweight even at the time of the RMB as the actual weight of the applicant has been indicated as 92 kg against an ideal weight of 69 kg. Thus, at the time of RMB, the applicant was overweight by 23 kg which indicates that the applicant failed to maintain the ideal weight which can be managed by regular exercise and restricted diet.

17. 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

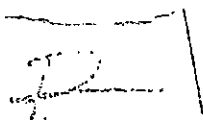
Risk factors

- 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.

18. 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.

19. 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

20. 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.

21. There is no order as to costs.

Pronounced in the open Court on this day of ¹⁴7 October
2024.


(JUSTICE RAJENDRA MENON)
CHAIRPERSON


(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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