

OA 2283/2019 WITH MA 3190/2019

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. Harish V. Shankar, Advocate

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P.MOHANTY, MEMBER (A)

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commissioned in the Indian Air Force on 31.05.1979 and superannuated on 28.02.2018 after about 38 years of qualifying service. During the Release Medical Board conducted vide AFSMF-16 dated 03.04.2017 prior to his retirement, he was found to be suffering from disabilities - (i) Primary Hypertension @ 30% (ii) Dyslipidemia @ Nil % & (iii) Overweight @ Nil for life and his medial category was permanently downgraded to A3G2(P), while his disabilities were held to be Not Attributable Nor Aggravated (NANA).

3. The initial claim of the applicant for the disability pension was rejected by the Competent Authority vide letter no. RO/3305/3/Med dated 31.08.2017 and the outcome of the same was communicated to the applicant vide letter No. Air HQ/99798/1/652651/02/18/DAV(DP/RMB) dated 06.02.2018. Aggrieved by the aforesaid rejection, the applicant has filed this OA.

4. Ld. Counsel for the Applicant stresses that the disability was detected in Sep 2013, after more than 34 years of Air Force service due to continuous service stress, and strain of Air Force service, dietary compulsion of service and being posted to different field areas including High Altitude Area and lack to time for proper rest, exercise and walking wherein the causal

connection of the disability is clearly established with the Air Force service.

5. Placing reliance on the judgement of the Hon'ble Supreme Court in Dharamvir Singh Vs. 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 Air Force 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.

6. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (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 Air Force service and is assessed @ 20% or more.

7. 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 Air Force service and not connected with the Air Force service and as such, his claim was rejected; thus, the

applicant is not entitled for grant of disability pension due to policy constraints.

8. Ld. Counsel further argues that the weight of the applicant was 67 kg at the time of enrollment, and that gradually gained weight and by the time of onset of the disability, applicant was overweight by around 20 kgs, purely due to dietary indiscretion, lack of exercise and a sedentary lifestyle, and his own lack of health consciousness, hence, the disabilities cannot be held attributable to or aggravated by service as he is solely responsible for his unreasonable weight gain in violation of the service requirements of maintaining physical fitness at all times.

9. 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 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), while other two disabilities (ii) & (iii) do not qualify. The only question that arises in the above backdrop is whether disability (i) suffered by the applicant were attributable to or aggravated by military service.

10. It is relevant to note that the applicant is constantly overweight ranging between 12-20 Kgs in the period from 06.09.2005 to 10.09.2013 just before the onset of disability, with his actual weight ranging between 76-85 Kgs as against the Ideal weight of 64-65 Kgs, with the same trend visible post the onset of disability under consideration.

11. We have further analysed the Re-categorisation Medical Boards conducted since Initial Medical Examination and we find the same trend, with the applicant not reducing the weight even after slew of directions advised by the medical experts including brisk walking, jogging and reducing the weight. However, 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. It seems the slew of directions issued by the medical experts have not been complied with 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.

12. We cannot shy away from the fact, that the disability - Primary Hypertension arises 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.

13. 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.

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

15. Consequently, the OA 2283/2019 is dismissed.

16. No order as to costs.

Pronounced in the open Court on 24 day of April, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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