

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

91.

OA 2322/2022 WITH MA 3122/2022

Col Abhaya Misra (Retd)	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Ms. Prachi Chaturvedi, Advocate for Mr. Manoj Kr Gupta, Advocate
For Respondents	:	Mr. Neeraj, Sr. CGSC

CORAM

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

ORDER
02.04.2024

MA 3122/2022

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the MA is allowed condoning the delay in filing the OA.

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2. 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 Orders (Annexure A-1/Colly) and call for the 1st Appeal rejection letter and quashed it being unreasonable, and/or

(b) To direct the respondents to grant the disability element of DP for the Disease of PH which has been assessed @ 30%, duly broad-banded to 50% alongwith arrears & interest @10% p.a. wef date of discharge, by treating disease as attributable to and aggravated by military service in terms of squarely covered judgments; produced at Annex-A5, 6 and 7; and/or

(c) To pass such further order or orders/Directions as this Hon’ble Tribunal may deem fit and proper in accordance with law.”

3. The applicant was commissioned into the Indian Army on 14.09.1987 and discharge from service on 30.04.2017. The applicant was examined by a duly constituted RMB on 03.12.2016 which held his disability of Primary Hypertension @ 30% for life while it was held that the disability was neither attributable to nor aggravated. The applicant submits that for the purpose of Primary Hypertension, the disability has been assessed @ 30% as is evident from the medical records. The composite disability for the ailment has been assessed at 30%.

4. Keeping in view the consistent stand taken by this Tribunal based on the law laid down by the Hon’ble Supreme Court in the case of Dharamvir Singh Vs. Union of

India and others [(2013) 7 SCC 316] that Primary Hypertension may arise even in a peace area due to stress and strain of service, we see no reason not to allow the prayer of the applicant with regard to the disability Primary Hypertension, which has been assessed by the competent Medical Board @ 30%.

5. The respondents are directed to grant disability element of pension to the applicant @ 30% for life which be rounded off to 50% for life from the date of retirement, i.e., 30.04.2017, in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of Union of India Vs. Ram Avtar (Civil Appeal No.418/2012) decided on 10.12.2014. However, the arrears will be restricted to three years from the date of filing of this OA or the date of applicant's retirement/discharge, whichever is lesser, in keeping with the law laid down in the case of Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648].

6. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 30% rounded off to 50% and direct the respondents 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.

7. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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