COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 2377/2022 WITH MA 3192/2022

HFO Munesh Kumar Gautam Retd. ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate

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

ORDER

MA 3192/2022

Keeping in view the averments made in the application and in the light of the decision in ***Union of India and others*** Vs. ***Tarsem Singh*** [(2008) 8 SCC 648), the delay in filing the OA is condoned. MA stands disposed of.

OA 2377/2022

2. 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 element of pension @30% rounded of to 50% with effect from the date of retirement of the applicant; along with all

consequential benefits.

3. The applicant was enrolled in the Indian Air Force on 29.12.1983 and discharged on 31.01.2020 after serving for 36 years 34 days of regular service. The Release Medical Board dated 09.04.2019 held that the applicant was fit to be discharged from service in composite low medical category A4G3(P) for the disability Left MCA Territory Infarct (old) @30% and Primary Hypertension with TOD in forms of LVH/LAHB (old) @40%, with composite being 60%, while the qualifying element for disability pension was recorded as NIL for life on account of disabilities being treated as neither attributable to nor aggravated by Air Force service (NANA).

4. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh*** Vs. ***Union of India & 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 Air Force service.

5. 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.

6. 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.

7. Having heard submissions on behalf of the parties and perused the medical documents qua the applicant it is relevant to extract Para 6 of Medical Board proceedings of RMB conducted at AF Stn Tambaram on 09.04.2019 which reads as under:-

Disability (as numbered in question I Part-VI)	Percentage of Disablement with duration	Composite assessment for all disabilities with duration (Max 100%) duration	Disability qualifying for disability pension with duration	Net assessment qualifying for disability pension (Max 100% with duration)
(i) Stroke- Ischemic infract Right MCA Territory (old) G 46 .3 Z 09.0	30% life long	60 % for life long	Nil for life long	Nil for life long
(ii)Primary Hypertension with TOD in form of LVH/LAHB (old)	40 % lifelong		Nil for life long	

8. We are of the opinion that the extent of disability 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). The only question that arises in the above backdrop is whether disability suffered by the applicant was attributable to or aggravated by military service. In this context it is pertinent to refer to "Part V-Opinion of the Medical Board" which reads to the effect.

PART- V

OPINION OF THE MEDICAL BOARD

1. Casual relationship of the disability with service condition or otherwise.

Disabilities	Attributable to service (Yes/No)	Aggravated by Service (Yes/No)	Not connected with service (Yes/No)	Reason/Cause specific condition and period of service
(i) Left MCA Territory infarct (old) I 69.3 Z09.0	No	No	Yes	Onset of disability on Jun 2013 at a peace station, Hyderabad. There is no close time association with HAA/CI Ops/ Field area. There is no delay in diagnosis and treatment. No documented history of coagulation disorder or any co-morbidity. The disability is a life style disorder. Therefore, disability is considered neither attributable nor aggravated by service.
(ii) Primary Hypertension with TOD in form of LVH/LAHB (old)	No	No	Yes	Onset of disability on Nov 2014 at a peace station Agra. It is a life style disorder. There is no close time association with HAA/CI Ops/ field area. There is no delay is diagnosis and treatment. Therefore, disability is considered neither attributable nor aggravated by service as per Para 43 of chapter VI of GMO military pension 2008.

9. 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. Moreover, there is no medical evidence recorded in the medical documents to establish that disability (i) i.e., Left MCA Territory infarct (old) I 69.3 Z09.0 is a life style disorder in respect of the applicant.

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 pension @ 60% for life rounded off to 75% in view of judgement of Hon'ble Apex Court in **Union of India versus Ram Avtar (supra)** from the date of discharge i.e. 31.01.2020. The arrears shall be disbursed to the applicant within four months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

13. Consequently, the OA 2377/2022 is allowed.

14. No order as to costs.

Pronounced in the open Court on 14 day of May, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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