

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

OA 2542/2022

Col Ajit Dhaka (RETD) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. I S Yadav, Advocate
For Respondents : Mr. Neeraj, Sr CGSC

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 declare the action of the respondents as unjust, arbitrary and illegal; and
- b. To quash the order dated 11 Jul 2019, dated 06 May 2022 and dated 27 Sep 2022 (Annexure A-1 Colly); and
- c. To direct the respondents to grant the disability element of pension 30% and further rounding off the disability element of pension to 50% from the date of retirement (w.e.f. 01.09.2019); and
- d. To grant an interest of 12% on the delayed payment of disability element of the disability pension; and
- e. To award exemplary costs upon the Respondents in the facts and circumstances of the record; and
- f. Such further order or orders, direction/directions be passed so as to this Learned Tribunal may deem fit and proper in accordance with law.

2. The applicant was commissioned in the Indian Army on 05.03.1988 and released on 30.08.2019. The applicant is

examined by a duly constituted RMB in May, 2019, which held his disability of Primary Hypertension @ 30% for life and it was held that the disability was neither attributable to nor aggravated by service. The applicant submits that for the purpose of Primary Hypertension, the disability has been assessed @ 30 composite for life as is evident from the medical records.

3. The matter was heard and reserved for orders on 04.07.2024. While going through the records, it was found that that in the order dtd. 27/09/2022 passed by the Second Appellate Authority, the reasons for rejection of applicant's claim was primarily on the ground that applicant was a heavy smoker and alcoholic, however medical records in support thereof were not produced and therefore, a detailed order was passed on 15.07.2024 directing the respondents to produce the aforesaid medical records within four weeks'. On 02.09.2024 when the matter was listed, the respondents were further directed to indicate within four weeks' what material was available before the Second Appellate Authority based on which the claim of the applicant was rejected. The respondents have been unable to produce any document on 26/11/2024, when

the matter was listed for hearing, to indicate that the applicant was a heavy smoker and alcoholic as indicated in the order passed by the Second Appellate Authority and therefore, based on the arguments advanced in the documents already, we will proceed to decide the matter.

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 v. 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 Release Medical Board @ 30%.

5. The respondents are directed to grant disability element of pension for the disability of Primary Hypertension to the applicant @ 30% for life which be rounded of to 50% for life from the date of retirement, i.e. 31/08/2019, 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.

6. Accordingly, we allow this OA holding that the applicant is entitled to disability element of pension @ 30% for life for the disability of Primary Hypertension rounded of to 50% for life 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. However, as the applicant has approached the Tribunal after a considerable delay, the arrears be restricted to three years prior to the date of filing of OA i.e. 19.10.2022.

7. No order as to costs.

8. Pending miscellaneous application, if any, stands disposed of.

Pronounced in open Court on this 6 day of December, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DEEPA VIG]
MEMBER (A)

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