

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

85.

OA 2654/2022 WITH MA 3369/2024
AND MA 3609/2022

WO Ram Prakash Dubey (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Ramniwas Bansal, Advocate
For Respondents : Mr. Arvind Kumar, Advocate

CORAM

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

ORDER
03.09.2024

MA 3369/2024

Counter affidavit has been filed. There being some delay in filing the same, this application has been filed seeking condonation of delay. Delay condoned. Counter affidavit is taken on record.

2. The MA stands disposed of.

MA 3609/2022

3. 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.

4. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

“(i) To quash and set aside the Applicant’s RMB proceedings to the extent the order denies grant of Disability element of Pension to the applicant.

“(ii) To set aside the impugned order and direct the respondents to grant the disability element of pension @ 30%, broad-banded to 50%, along with all consequential benefits, with arrears and interest @12% p.a. w.e.f. date of discharge, by treating disease as attributable to and aggravated by military service, in view of the Hon’ble Apex Court Judgment in Rajbir Singh (Supra) & Dharamvir Singh (Supra), or

“(iii) To pass such orders, direction/directions as this Hon’ble Tribunal may deem fit and proper in accordance with law.”

5. The applicant was enrolled into the Indian Air Force on 30.03.1988 and discharged from service on 31.03.2020. The applicant was examined by a duly constituted RMB on 10.06.2019, 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% as is evident from the medical records. The composite disability for the ailment has been assessed at 30% for life.

6. 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%.

7. 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 off to 50% for life from the date of retirement, i.e., 31.03.2020, 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.

8. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 30% for the disability of Primary Hypertension rounded off 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.

9. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Neha