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

OA 2697/2022

Sigmn Madhusudan Giri (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Rakesh Kumar Yadav, Advocate

For Respondents : Mr. Harish V Shankar, Advocate

Date- 22 July, 2024

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 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

“(i) The Applicant received rejection letters from the Respondents vide their letter Nos. P/15696495W/REJECTION/DP-1/NER dated 10 Feb 2022 and B/40502/618/2022/AG/PS-4(1st Appeal) dated 08 Sep 2022 stating that the Applicant herein is not entitled to the Disability Pension, as the Disability is neither attributable to nor aggravated by Military Services. Copies of these Letters Dated 10 Feb 2022 and 08 Sep 2022 are annexed as Annexure A-1 (Colly).

(ii) Applicant herein sent his First Appeal to the Respondent vide Appeal dated 28 Apr 2022, against the rejection of Disability Pension.

(iii) Applicant herein sent his Second Appeal to the Respondent vide Appeal dated 05 Aug 2022, as appeal

against the impugned order was not replied within stipulated time.”

BRIEF FACTS

2. The applicant was enrolled in Indian Army on 30.12.2004 and discharged from service on 31.12.2021 after 17 years and 02 days of service. The applicant was downgraded to the low medical category P2(P), for the disabilities “Primary Hypertension and Dyslipidemia. The applicant was subjected to Release Medical Board (RMB) on 14.12.2021 whereby his percentage of disability was assessed as (i) Primary Hypertension @ 30% for life and (ii) Dyslipidemia @5% for life, and the composite assessment for both the disabilities was 33% for life and both the disabilities were adjudged as neither attributable to nor aggravated by military service.

3. The grant of disability pension was rejected and communicated to the applicant vide letter No. P/15696495W/REJECTION/DP1/NER dated 10th February, 2022, with an option that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of letter.

4. The applicant’s first appeal dated 31st May, 2022 has been considered by the Appellate Committee of first appeal and has been rejected vide letter No. B/40502/618/2022/PS-4 (1st Appeal) dated 8th September, 2022, aggrieved of which the

applicant has filed the instant OA. In the interest of justice, in terms of Section 21(2)(b) of the AFT Act, 2007, we take up the same for consideration.

CONTENTION OF THE PARTIES

5. The learned counsel for the applicant submitted that the applicant joined the Indian Army on 30th December, 2004 without any disease and during the selection process, the applicant was thoroughly medically examined by the Recruitment Board and was found medically fit without any illness.

6. The learned counsel for the applicant further submitted that on successful completion of his training he was posted to various units including Field Area, HAA and was also assigned task in Operation Rakshak in J&K. He was also given duties in Baramullah city and URI Sector for search out operation of hidden militants.

7. The learned counsel for the applicant argued that in addition to conditions of service, applicant carried out extra duties, night duties at low temperature in winters and also in range firing in the field of Mahajan, Rajasthan and added that the applicant also carried out various task duties and Missile Firing at Chandipur, Balasore, Odisha etc. The learned counsel further submitted that when the applicant was posted to Leh, before proceeding he went through a medical Board which is

compulsory for everyone as required to be fit to stay at Leh(HAA), wherein, he was diagnosed with Primary Hypertension and Dyslipidemia and was placed in low medical category and hence he was made unfit for posting in Leh like HAA area.

8. The learned counsel further submitted that the even after his disabilities were diagnosed he was posted to Jammu like intense field areas and therefore these prolonged stressful working conditions, strict military discipline, dietary compulsions and various other socio-geographical factors has immensely contributed to onset and aggravation of the applicant's disability.

9. The learned counsel for the applicant placed reliance on the verdict of the Hon'ble Supreme Court of India in case of *Dharamvir Singh Vs Union of India & Others* (Civil Appeal No. 4949/2013); (2013 7 SCC 316, *Union of India & Ors. Vs. Rajvir Singh*,(2015) 12 SCC 264 and *Union of India & Ors Vs. Angad Singh Titaria*,(2015) 12 SCC 257.

10. Per contra the respondents submit that the Primary Hypertension disability is basically a lifestyle related disorder with onset in peace station. The learned counsel further submitted that even though the applicant served in various field area and HAA but the onset of the disability was in the peace area at Chandigarh in December, 2020 and hence, the disability is NANA as per Para 43 of GMO 2008.

11. The learned counsel for the respondents also submitted that the applicant developed the said disabilities due to genetic inheritance as the applicant has a family history of Hypertension and Diabetes Mellitus which is also evident in clinical assessment of the RMB of the applicant.

12. The learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, being an Expert Body, found the disabilities as being “Neither Attributable to Nor Aggravated by Military Service” and also the disability of Hypertension of the applicant is directly related to metabolic disorder and genetic inheritance. While rejecting the disability element of pension to the applicant, the respondents have given detailed reasons for not assessing the disabilities as attributable to or aggravated by military service as the applicant had no exceptional stress and strain of service and the disabilities were conceded as neither attributable to nor aggravated by military service in terms of Para 43 of Chapter VI of Guide to Medical Officers (Military Pensions) 2002, amendment 2008. The learned counsel submitted that since the applicant’s disabilities do not fulfill one of the twin conditions in terms of Para 53 of the Pension Regulations for the Army (Part-I), 2008 as the same were assessed as neither attributable to nor aggravated by military service, and therefore, the applicant is not entitled to

the grant of the disability pension and the OA thus, deserved to be dismissed.

ANALYSIS

13. It is a fact that the applicant vide RMB dated 14.12.2021 has been assessed with the disability of Primary Hypertension @ 30% which has been conceded as NANA by the RMB. In so far as, the disability of 'Dyslipidemia' @5% for life is concerned, the disability is assessed below 20% and do not fulfill the twin criteria as per Para 53 of Pension Regulations for Indian Army (Part-I), 2008 and hence is not admissible.

14. In so far as the disability of Primary Hypertension is concerned, a perusal of the actual weight as indicated in the RMB reveals that the applicant was overweight by 15.5% at the time of the RMB.

15. The publication released by World Health Organization titled "Hypertension" assessed through internet on 16.03.2023 was examined by us and which reads to the effect:-

"Hypertension (high blood pressure) is when the pressure in your blood vessels is too high (140/90 mmHg or higher). It is common but can be serious if not treated.

People with high blood pressure may not feel symptoms. The only way to know is to get your blood pressure checked.

Things that increase the risk of having high blood pressure include:

- older age
- genetics

- being overweight or obese
- not being physically active
- high-salt diet
- drinking too much alcohol

Risk factors

- Modifiable risk factors include unhealthy diets (excessive salt consumption, a diet high in saturated fat and trans fats, low intake of fruits and vegetables), physical inactivity, consumption of tobacco and alcohol, and being overweight or obese.”

This bulletin of WHO specifically brings out the effect of overweight/obesity on hypertension.

CONCLUSION

16. In view of the aforesaid contentions and the parameters referred to above, and the fact that the applicant was overweight and the correlation of Primary Hypertension and overweight we are of the view that weight of the applicant is a contributory factor toward the onset of the Primary Hypertension and the applicant is not entitled to the grant of disability element of pension. We are not inclined to grant any relief to the applicant and the original application stands dismissed.

17. There is no order as to costs.

Pronounced in open Court on this 22^{ed} day of July, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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