

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

OA 2729/2021

JWO Raghbir Singh Yadav (Retd.) ... Applicant

Versus

Union of India and Ors. ... Respondents

For Applicant : Mr. Rakesh Kumar Yadav, Advocate

For Respondents : Mr. Rajeev Kumar, Advocate

CORAM

HON'BLE MS. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN C.P.MOHANTY, MEMBER (A)

ORDER

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 disability of the applicant as attributable to/aggravated by military service and grant disability element of pension @30% rounded off to 50% with effect from the date of retirement of the applicant; along with all consequential benefits.

2. The applicant was enrolled in the Indian Air Force on 17.07.1984 and retired on 31.07.2019 after rendering 35 years and 15 days of regular service. The Release Medical Board dated 31.01.2019 held that the applicant was fit to be

discharged from service in composite low medical category A4G3 (P) for the disability, i.e., PRIMARY HYPERTENSION @30% for life with composite disability @ 30% for life while the qualifying element for disability pension was recorded as NIL for life on account of disability being treated as neither attributable to nor aggravated by military service (NANA).

3. The initial claim of the applicant for grant of disability pension was adjudicated by the competent authority and rejected vide letter No. RO/3305/3/Med dated 31.05.2019 stating that the aforesaid disability was considered as neither attributable to nor aggravated by military service. The outcome of the same was also communicated to the applicant vide letter No. Air HQ/99798/1/629384/07/19/DAV(DP/RMB) dated 09.10.2019 with an option that he may prefer an appeal to the Appellate Authority. Subsequently, applicant preferred first appeal which was again rejected vide letter No. AirHQ/99798/5/05/2021/629384/DP/AV-III dated 28.06.2021. Thereafter, the applicant preferred second appeal which is under consideration. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

4. Placing reliance on the judgement of the Hon'ble Supreme Court in Dharamvir Singh Vs. UOI & Ors [2013 (7) SCC 36], learned counsel for the 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 Indian 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 military 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 disability of the applicant was assessed as "neither attributable to nor aggravated" by military service and not connected with the military service and as such, his claim was rejected; thus, the

applicant is not entitled for grant of disability pension due to policy constraints.

7. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the extent of disability, i.e., Primary Hypertension 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.

8. It is relevant to note that the applicant is constantly overweight with his actual weight being 85 kgs as against the Ideal weight of 67 Kgs, with the same trend visible before the onset of the disability under consideration. We observe that applicant has not made any effort to bring down his weight to the acceptable limits thus clearly showcasing that onset of disability is the result of the applicant being alarmingly overweight and therefore, the argument that the applicant suffered the disability due to stress and strain of the service is

wholly unfounded on the simple reasoning that the organization cannot be held liable for the own actions of the applicant.

9. We cannot shy away from the fact, that the disability - Primary Hypertension is due to interplay of metabolic and lifestyle factors and failure in maintaining the ideal body weight which can be managed by regular exercise and restricting diet, and the fact that the applicant is alarmingly overweight signifies that the applicant has remained obese over a period of time, thereby, himself inviting the disability, and in such a case, it would be grossly unjustified for us to ignore the aforesaid facts.

10. Applying the above parameters to the case at hand, we are of the view with respect to disability - Primary Hypertension, there is no denial from the fact that if the claimant is himself not responsible enough to control the factors which are well within his voluntary control, he cannot be allowed to garner benefit of such beneficial schemes and provisions.

11. Therefore, in view of our analysis, the OA is liable to be dismissed.

12. Consequently, the OA 2729/2021 is dismissed.
13. Pending miscellaneous application, if any, stands closed.
14. No order as to costs.

Pronounced in the open Court on 31st day of May, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

Ps
OA 2729/2021