

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

OA 2925/2022 WITH MA 3822/2023 AND MA 4051/2022

Cdr PC Acharya(Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Shakti Chand Jaidwal, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate

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

ORDER

MA 4051/2022

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. However, while reviewing the court's order sheet, it was noted that MA 3822/2023 had been condoned vide order dated 29.11.2023, but MA No. 4051/2022 was wrongly mentioned in place of MA 3822/2023.

2. In view of the above, MA 4051/2022 stands disposed of.

OA 2925/2022

3. Invoking the jurisdiction of this Tribunal under Section 14 of The Armed Forces Tribunal Act, 2007, the

OA 2925/2022
Cdr PC Acharya (Retd)

applicant has filed this application and the reliefs claimed in Para 8 read as under:

- (a) *Set aside the impugned order dated 31.10.2022 passed by the respondents, rejecting appeal of the applicant for grant of disability pension as time-barred.*
- (b) *Direct the respondents to treat disability of the applicant, namely, "CERVICAL SPONDYLOSIS" as attributable to/aggravated by stress and strain of Naval Service.*
- (c) *Direct the respondents to grant disability pension to the applicant @20% for life w.e.f. 01.01.2006, as degree of his disablement has been assessed @20% for life by the RMB.*
- (d) *Direct the respondents to pay disability pension to the applicant at enhanced rate of 50% for life from 01.01.2006 by broad-banding applicant's disability from 20% to 50% as per Govt. Policy dated 31.01.2001.*
- (e) *Direct the respondents to pay to the applicant an interest @10% p.a. on arrears of the disability pension w.e.f. 01.01.2006.*

4. The facts germane to the case are that the applicant was commissioned in the Indian Navy on 01.07.1979 and has taken premature separation from service on 31.03.2003. The applicant was retired in low medical category A2G2 (S2A2) (P) for the diagnosis's "CERVIAL SPNDYLOSIS ICD M-47.2, Z-09.0" @20% for life. The composite disability for the said ailment has been assessed at 20% for life. The Release Medical Board of the applicant was conducted on 29.03.2003

at INHS Kalyani, Visakhapatnam and his disability was considered as NANA by stating it to be a *constitutional disorder not connected with service*. The applicant had made an appeal dated 13.10.2022 to the respondents for grant of disability pension and the same has been rejected by the respondents vide order dated 31.10.2022 which reads as under:-

1. xxx xxx xxx

2. *It is intimated that in accordance with MoD letter No. 1(3)/2008/D(Pen/Pol) dated 17 May, 2016 (copy enclosed); a time limit of five years is prescribed for filing an appeal for consideration of the case for grant of disability pension, a time limit of five years has been elapsed.*

3. *You were retired from Naval Service in the year 2003 but you have submitted your 1st appeal for grant of Disability pension 19 years after discharge from service.*

4. *Hence, your first appeal for grant of disability pension cannot be processed further as per extant policy.*

5. According to the applicant, the relief sought by him in the instant matter is squarely covered by a catena of decisions of the Hon'ble Supreme Court including Dharamvir Singh Vs. Union of India (2013)7 SCC 316, Union of India Vs. Chanderpal, Union of India Vs. Rajbir Singh (2015) 12SCC 264, Union of India Vs Angad Singh Titaria (2015) 12SCC 257, Union of India Vs. Manjeet Singh (2015) 12SCC 275, Ex Hav Maniram Bharia

Vs. Union of India, Satwinder Singh Vs. Union of India, Ex Gnr Laxmanram Poonia Vs. Union of India (2017) 4 SCC 697.

According to the applicant, his claim for disability pension is also supported by the applicable rules.

6. Further it is the case of the applicant that on completion of stressful and strenuous flying training for one and half years at Elementary Flying School (EFS) at Bidar, Air Force Academy (AFA) at Dundigal and Helicopter Training School (HTS) at Kochi, the applicant was posted to various establishment/warships of the Indian Navy from 1982-2003. Most stressful and difficult appointments of the applicant include postings on board operational warships, seagoing flights/air squadrons and Hard Station at Ramnad (T.N), which took its toll on his health resulting in aforesaid medical disability for life, because of which he was compelled to seek premature retirement from service.

7. Learned counsel further submits that out of 23 years' service in Indian Navy, the applicant has served onboard Operational Warships/Flights/Air squadrons for 10 years either on permanent postings or as a part of sea going flights/air

squadrons. While serving at sea, the applicant had no fixed working hours, wherein, apart from his professional duties of a pilot, he had to carry out watch keeping duties and also participate in all evolutions of the ship. His shore postings to flying training squadron INAS 336 and school for Naval Airmen (SFNA), were equally stressful, as he had to work beyond normal call of his duties to ensure that all trainees were passed out well in time to meet administrative and operational commitments of the Indian Navy to achieve national security imperatives.

8. Learned counsel for the applicant further states that the applicant suffered from a disability, namely, "Cervical Spondylosis ICD M-47, 2, Z-09.0" in 1984 and his medical category was downgraded initially temporarily by the R-Cat Medical Board held at INHS Sanjivani (Kochi), which was made permanent by the Review Medical Boards later after finding no improvement in his medical condition even after 19 years of treatment after its onset in 1984.

9. On the other hand, the respondents have contended that the claim put-forth by the applicant has been

found to be neither attributable to nor aggravated by military service by the Release Medical Board dated 29.03.2003 and hence, he is not entitled to disability pension.

10. Learned counsel for the respondents submits that the applicant retired prematurely from Naval Service w.e.f. 31.03.2003. His Release Medical Board held in March 2003 found him suffering from the disability namely Cervical Spondylitis. Release Medical Board conceded this disability as Neither Attributable to Nor Aggravated by Naval Service and assessed it at 20% for life long period. His disability was accepted at Neither Attributable to Nor Aggravated by Naval Service, he was not eligible for grant of disability pension. Moreover, since he has retired prematurely from Naval Service, he was not eligible for disability pension and his initial case for grant of disability pension was not processed as per extant policy. As the applicant has retired prematurely, he was not eligible for grant of disability and his initial claim was not processed as per extant policy.

11. We have considered the submissions done by the learned counsel for both the parties in the light of the relevant rules and the judgment of the Hon'ble Supreme Court rendered in Dharmavir Singh's case (supra) which has been followed in subsequent decisions of the Hon'ble Supreme Court in Dharmavir Singh's case, it has, inter alia, been held as under:-

I. The question whether a disability is attributable or aggravated by military service is to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982".

II. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service.

III. If no note of any disability or disease was made at the time of individual's acceptance be deemed to have arisen in the service.

IV. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service. The medical board is required to state the reasons."

12. It is undisputed case of the parties that when the applicant entered into the military service, he was not suffering from the above disability, which leaves no manner of doubt that the disability accrued to him during the course of military service. Hence, following the principles laid down in Dharamvir

Singh (supra) it is apparent that the disability is attributable or aggravated by Military Service.

13. Considering the law laid down by the Hon'ble Supreme Court and also the attendant circumstances and issues discussed in detail above, the rejection of the claim of the applicant is set aside and the applicant is thus, held entitled to disability element of pension @ 20% for life which is liable to be broadbanded to 50% for life from the date of retirement in terms of judgment of Hon'ble Supreme Court in Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012) decided on 10.12.2014 decided on 10.12.2014 from the date of discharge, i.e. 31.03.2003. However, the arrears will be restricted to three years from the date of filing of this OA, i.e., 08.12.2022 in keeping with the law laid down in the case of Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649].

14. Accordingly, the respondents are directed 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.

15. No order as to costs.

16. Pending miscellaneous application, if any, stands closed.

Pronounced in the open Court on the 16 day of July, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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