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

66.

OA 2971/2022 WITH MA 323/2024

Col Dinesh Kumar Yadav (Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Piyush Thakaran, Advocate
For Respondents : Mr. Anil Kumar Gautam, Sr CGSC

CORAM :

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

ORDER
14.02.2024

MA 323/2024

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

OA 2971/2022

2. 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:

> a. *"Call for the records including the RMB proceedings as well as the findings and opinion as approved by the competent authority based on which the Respondents in most illegal manner rejected the claim of the Applicant in respect of (i)*

PRIMARY HYPERTENSION and (ii) DIABETES MELLITUS TYPE II and thereafter quash such orders;

b. *Quash the orders of the Respondents as promulgated vide letter dated 19 Aug 2021 (impugned order Annex A1), 10 Mar 2022 (impugned order Annex A2) and 17 Oct 2022 (impugned order Annex A3) being illegal and mala fide being contrary to the law as laid down by the Hon'ble Supreme Court in catena of judgments*

c. *Direct the Respondents to process the claim in respect of (i) PRIMARY HYPERTENSION and (II) DIABETES MELLITUS TYPE II @ 44 percent composite along with arrears with interest 18% expeditiously as possible;*

d. *Further, direct Respondents to extend benefit of broad banding in respect Applicant's disability of (i) PRIMARY HYPERTENSION and (ii) DIABETES MELLITUS TYPE II and round off the same to 50% and also grant arrears of the disability pension with interest @ 12% pa to be compounded quarterly with exemplary cost from the date of retirement till date payment in terms of Hon'ble Supreme Court's judgments in the case of K.J.S.Buttar Vs UOI & Ors and Union of India v Ram Avtar and anr;*

e. *Issue such other order/direction as may in facts and circumstances the case."*

2. The applicant was commissioned in the Indian Army as **2nd Lt.** on **09.03.1990** and discharged from Service on **31.07.2021**. The applicant submits that at the time of discharge he was suffering from two disabilities, namely, Primary Hypertension at 30 per cent and Diabetes Mellitus at 20 per cent respectively as is evident from the

medical records. The composite disabilities for both these disabilities has been assessed at 44 per cent for life. However, at the time of hearing learned counsel for the applicant submitted that he is not pressing his claim for Diabetes Mellitus.

3. 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 competent Medical Board @ 30%.

4. Accordingly, we allow this application and direct the respondents to grant disability element of pension to the applicant at the rate of 30% for life which be rounded off to 50% for life from the date of retirement, i.e., **31.07.2021** 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.

5. 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.

6. No order as to costs.

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

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/vks/

Vide our order of even date, we have allowed the OA. Faced with this situation, learned counsel for the respondents makes an oral prayer for grant of leave to appeal for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the respondents and going through our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order rendered by the Tribunal, therefore prayer for grant of leave to appeal stands declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/vks/