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

74.

OA 3002/2022 WITH MA 829/2024

WO Ekender Singh (Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

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

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

ORDER
28.02.2024

MA 829/2024

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.

OA 3002/2022

3. Invoking the jurisdiction under Section 14 of the Armed Forces Tribunal Act, 2007, the instant OA has been filed praying for the following prayers :-

> *"(a) 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.*

(b) To set aside the impugned order and direct respondents to grant the disability element of pension @ 50%, broad-banded to 75%, 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

(c) To pass such orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."

4. The brief facts of the case are that the applicant was enrolled in the Indian Air Force on 23.03.1984 and discharged from service on 31.03.2022 after about 38 years of qualifying service. The Release Medical Board held that the applicant was fit to be discharged from service in composite low medical category A4G4 (P) for the disabilities- (a) Primary Hypertension (Old), ICD No.I10.0 @ 30%, (b) Diabetes Mellitus Type II (Old), ICD No.E11.0 @ 20%, (c) Cataract Left Eye (OPTD) with Pseudophakia IMSC Right Eye (Old) ICD No.Z96.1 @ 15% with composite disability 50% for life while the qualifying element for disability pension was recorded as NIL for life on account of disabilities being treated as neither attributable to nor aggravated by military service (NANA). During the course of hearing today, learned counsel for the applicant made a

fair statement that for the present in this application, the applicant would only be praying for disability element of pension pertaining to two aliments, i.e., (i) Primary Hypertension (Old) and (ii) Diabetes Mellitus Type II (Old) and gives up his claim for other ailment.

5. It is stated by the applicant that his claim for disability element of pension was rejected by the adjudicating and medical authority vide their letter dated 03.12.2021. Against the said rejection, the applicant preferred 1st Appeal dated 27.05.2022 which is under process. Aggrieved by the rejection of the claim and the awaited outcome of the 1st Appeal, the applicant has approached this Tribunal.

6. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh*** Vs. ***Union of India and Ors.*** [2013 (7) SCC 36], learned counsel for applicant argues that after thorough medical examination the applicant was enrolled into Air Force service and there was no note of any disability recorded in his service records. It is further contended that he served in the Air Force at various places in different environmental and service conditions in his prolonged service; therefore, any disability occurring during the period of his service is deemed to be attributable to or

aggravated by Air Force service.

7. Per Contra, learned counsel for the respondents submits that under Rule 153 of Pension Regulations for IAF, 1961 (Part-I), the primary conditions for the grant of disability pension are "Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by air force service and is assessed at 20 per cent or more". In other words, disability pension is granted to those who fulfill the following two criteria simultaneously: (i) Disability must be either attributable to or aggravated by service and (ii) Degree of disablement should be assessed at 20% or more.

8. Relying on the aforesaid provision, learned counsel for respondents further submits that the aforesaid disabilities of the applicant were assessed as "neither attributable to nor aggravated" by Air Force services that caused non-fulfillment of the criteria (i) as mentioned above and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability element of pension due to policy constraints.

9. 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 disabilities were assessed to be above 20% which is the bare minimum for grant of disability element of pension in terms of the Pension Regulations for the Air Force. The only question that arises in the above backdrop is, whether disability suffered by the applicant was attributable to or aggravated by Air Force service?

10. The issue of attributability of disease is no longer ***res integra*** in view of the verdict of the Hon'ble Apex Court in ***Dharamvir Singh*** (supra), wherein, it is clearly spelt out that any disease contracted during service is presumed to be attributable to military service, if there is no record of any ailment at the time of commission into the Military Service.

11. Furthermore, the issue regarding the attributability of Diabetes Mellitus has been settled by the Hon'ble Supreme Court in the case of ***Commander Rakesh Pande*** Vs. ***Union of India*** (Civil Appeal No.5970 of 2019), wherein, the Apex Court has not only held that the Diabetes Mellitus is a disease which is of permanent nature and will entitle the applicant to disability pension, but also observed that in case where the disability is of permanent nature, the disability assessed by the

Medical Board shall be treated for life and cannot be restricted for specific period.

12. Regarding broad-banding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in the case of ***Union of India*** Vs. ***Ram Avtar*** (Civil Appeal No.418 of 2012) and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India vide its Letter No. F.No.3 (11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18.04.2016 has issued instructions for implementation of the Hon'ble Supreme Court's order in the case of ***Ram Avtar*** (supra).

13. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of medical disease/disability, the disability must be presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by air force service.

14. Therefore, in view of our analysis, the OA 3002/2022 is allowed and respondents are directed to **grant the benefit**

of the disability element of pension compositely @ 44% for life [for Primary Hypertension (Old) @ 30% for life and Diabetes Mellitus Type II (Old) @ 20% for life], **rounded off to 50% in view of the Judgment of the Hon'ble Apex Court in the case of *Union of India* Vs. *Ram Avtar* (supra) from the date of discharge, i.e., 31.03.2022.**

15. The arrears shall be disbursed to the applicant within three months of receipt of the copy of this order failing which he shall earn interest @ 6% p.a. till the actual date of payment.

16. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Neha