

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

52.

OA 322/2023 with MA 459/2023 & MA 4786/2023

Gp Capt Debashish Bhattacharya (Retd)	.....	Applicant
Versus		
Union of India & Ors.	.....	Respondents

For Applicant	:	Mr. Rajesh Nandal, Advocate
For Respondents	:	Mr. Neeraj, Sr CGSC,

CORAM

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

ORDER  
09.01.2024

MA 4786/2023

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

MA 459/2023

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and others Vs. Tarsem Singh (2008) 8 SCC 648, the same is allowed condoning the delay in filing the O.A.

MA stands disposed of.

OA 322/2023

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) The letter dated 10 May 2022 i.e. impugned order of respondents denying second appeal dening should be quashed.
- (b) Direct the respondents to grant disability element of pension to the applicant duly rounded off to 50% from 30% w.e.f. his date of discharge i.e. 31.12.2020.
- (c) Direct respondents to pay the due arrears of disability element of Pension with interest @ 12% p.a. from the date of retirement with all the consequential benefits. It may be paid in a time bound period.
- (d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.

2. The applicant submits that for the purpose of Primary Hypertension, the disability has been assessed @ 30% as is evident from the medical records.

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 holding that the applicant is entitled to disability element of pension @ 30% rounded off to 50% with effect from the date of his discharge. All other claims stand rejected.

5. The respondents are directed to grant disability element of pension to the applicant @ 30% for life which be rounded off to 50% for life from the date of retirement 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. However, the arrears will be restricted to three years from the date of filing of this OA or the date of applicant's retirement/discharge, whichever is lesser, in keeping with the law laid down in the case of Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649].

6. 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.

7. Pending MAs, if any, stand closed. There is no order as to costs.

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[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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[LT. GEN. R.M. HARIZ]  
MEMBER (A)

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