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

110.

OA 45/2019 WITH MA 422/2019

Gp Capt (TS) Rajendra Singh (Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Anil Srivastava, Advocate
For Respondents : Mr. Y.P. Singh, Advocate

CORAM

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

ORDER
20.03.2024

MA 422/2019

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*** (2009(1) AISLJ 371), the delay in filing the OA is condoned.

2. MA stands disposed of.

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3. Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application and the reliefs claimed in para 8 read as under:

> *(a) To direct the respondents to grant disability pension duly broadbanded the disability from @60% to @75% alongwith interest @8% per annum on the arrears w.e.f the date of his superannuation.*

(b) *That the applicant be awarded reasonable cost of the litigation as deemed just and proper by the Hon'ble Court in the facts & circumstances of the case.*

2. 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 disabilities of the applicant as attributable to/aggravated by military service and grant disability element of pension @60% rounded of to 75% with effect from the date of retirement of the applicant; along with all consequential benefits.

3. The applicant was commissioned in the Indian Air Force on 25.07.1983 and retired on 30.06.2015 after completion of terms of engagement. The Release Medical Board dated 20.11.2014 held that the applicant was fit to be discharged from service in composite low medical category A4G4(P) for the disabilities - (i) PRIMARY HYPERTENSION @30% (ii) DIABETES MELLITUS TYPE II @20% and (iii) Dyslipidaemia @ 1-5%, with composite disability @ 50% 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).

4. The claim of the applicant for grant of

disability pension was rejected and the same was communicated to the applicant vide letter No. Air HQ/99797/3586/Dis/O/DAV-1(B) dated 26.05.2015 stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service. Against the said rejection, applicant preferred a first appeal dated 29.06.2018 which was rejected vide letter No. Air HQ/99797/3586/Dis/O/DAV-I(B) dated 11.01.2019 suggesting that he may prefer second appeal in this regard. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

5. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36],*** Learned Counsel for 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 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 Air Force service.

6. 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.

7. 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 service. Thus, the applicant is not entitled for grant of disability pension due to policy constraints.

8. 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 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). Since, the third disability, i.e. Dyslipidaemia @ 1-5% does not fulfill the requisite of 20%, it does not warrant any consideration. Now, the only question that arises in the above backdrop is whether the disabilities suffered by the applicant were attributable to or aggravated by Air Force service ?

9. 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 v. Union of India (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 enrollment into the military Service..

10. Furthermore, the issue regarding the attributability of Diabetes Mellitus has been settled by the ***Hon'ble Supreme Court in Commander Rakesh Pande v. 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.

11. Regarding broadbanding benefits, we find that the ***Hon'ble Supreme Court in its order dated 10.12.2014 in Union of India v. 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 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

12. 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, or the applicant being overweight, be presumed to have been attributable to or aggravated by air force service.

13. Therefore, in view of our analysis, the OA is partly allowed and Respondents are directed to ***grant benefit of disability element of pension compositely assessed @ 44% for life*** (for PRIMARY HYPERTENSION @ 30% and DIABETES MELLITUS Type II @ 20% for life), ***rounded off to 50%*** in view of judgement of Hon'ble Apex Court in Union of India versus Ram Avtar (supra). However, the arrears shall be restricted to three years from prior to the date of filing of this OA which is 04.01.2019. The arrears shall be disbursed to the applicant within four months of receipt of this order

failing which it shall earn interest @6% p.a. till the actual date of payment.

14. Consequently, the OA 45/2019 is partly allowed.

15. No order as to costs.

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

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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