

OA 638/2019

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. K K Tyagi, Advocate

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

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 @20% rounded off to 50% with effect from the date of retirement of the applicant; along with all consequential benefits.

2. The applicant was enrolled in the Indian Air Force on 10.10.1984 and discharged on 31.10.2017 after serving for more than 33 years of qualifying service. The Release Medical Board dated 25.10.2017 held that the applicant was fit to be discharged from service in composite low medical category for the disability - CENTRAL RETINAL VEIN

OCCLUSION (LEFT EYE) @20% with low medial category A4G3(P) 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).

3. The claim of the applicant for grant of disability pension was rejected vide letter no. Air HQ/99798/5/101/19/AV-III (Appeals) dated 04.07.1999 stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

4. 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.

5. Submitting on the issue of attributability, Ld. Counsel submits that the applicant was assigned the trade of Air Force

Security Officer (AFSO), wherein he was employed on the tarmac to guide the movement of planes, including fighter jets, and that it had substantial effect on his eyes, since glasses for protection of eyes were not available at that time, and therefore, the disability is attributable to 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 and not connected with the 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 more than 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). Observing above, the only question that arises in the above backdrop is whether the disability CENTRAL RETINAL VEIN OCCLUSION (LEFT EYE) 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 enrolment into the military Service. Moreover, perusal of Summary & Opinion of Graded Specialist (Ophthalmology) at Military Hospital Chennai which reads as follows :-

“Background Data: The individual developed sudden onset diminution of vision in his left eye in October 2012. He was evaluated and diagnosed as a case of Central Retinal Vein Occlusion (Left Eye) and managed conservatively initially at CHWC and thereafter at AHRR. He was treated with multiple sittings of Anti VEGF intra-vitreous injections in his left eye at AHRR. He has also undergone cataract surgery (Phacoemulsification +PCJOL implantation) and scatter laser in his left eye in Jun 2014 at AHRR.”

adequately substantiates the causal connection of the disability to military service as enunciated in the case of **Dharmavir Singh vs. UoI** (Supra).

10. 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).

11. 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.

12. Therefore, in view of our analysis, the OA is partly allowed and Respondents are directed to ***grant benefit of***

disability element of pension @ 20% for life rounded off to 50% in view of judgement of Hon'ble Apex Court in *Union of India versus Ram Avtar (supra)* from the date of discharge i.e. 31.10.2017. 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.

13. Consequently, the O.A. 638/2019 is allowed.

14. No order as to costs.

15. Pronounced in the open Court on 18th day of March 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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