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

77.

OA 682/2018 with MA 543/2018

Col Pramod Sharma (Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Shakti Chand Jaidwal, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
14.03.2024

MA 543/2018

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.

2. MA stands disposed of.

OA 682/2018

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA claiming the following relief:-

> **"(a) Set aside the Impugned Order dated 25.01.2018 passed by the Respondents, rejecting the Appeal of the**

Applicant for disability pension as time-barred;

(b) Call for the original medical records of the Applicant and after perusal thereof, direct the Respondents to treat the disability of the Applicant namely "DIABETES MELLITUS TYPE-II" as Attributable to or Aggravated by military service, since the Applicant was found suffering from the said disability by the RMB at the time of his retirement and from which he continues to suffer for life, '

(c) Direct the Respondents to treat the disability namely "FRACTURE RT 5th MHETACARPAL" as Attributable to military service, since this disability is caused because of the injury sustained by the Applicant while saving his staff from anti-social elements and it has already been held attributable to military service vide injury report dated 23.09.2005 and Court of Inquiry Report dated 29.12.2005;

(d) Direct the Respondents to grant and pay disability pension to the Applicant at-least @ 50% for life w.e.f. 01.09.2011 by rounding off both the disabilities as per Govt. Policy on broad-banding/Rounding-off dated 31.01.2001.

(e) Direct the Respondents to pay 10% interest to the Applicant on the arrears of disability pension w.e.f 01.09.2011 and/or

(f) Issue such other order(s) as may be deemed appropriate in the facts and circumstances of the case."

4. The applicant was commissioned in the Indian Army on 07th June, 1980 and retired on 31st August, 2011. The Release Medical Board dated 09th February, 2011 held that the applicant was fit to be discharged from service in

S1H1A1P2E1 medical category for the disability –DIABETES MELLITUS Type II @ 15-19% 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).

5. The claim of the applicant for grant of disability pension was rejected vide letter No. 13101/IC-39045/Engrs/MP 6(C)/149/2011/AG/PS-4 (Imp-II) dated 31st May, 2011 stating that the aforesaid disability was considered as neither attributable to nor aggravated by military service. Faced with the situation, the applicant preferred to file First appeal dated 17th January, 2018 against the rejection of his claim, however, the same has been rejected by the Appellate Committee on First Appeal and was communicated to the applicant vide letter No. 12681/IC-39045/T-8/MP-5(B) dated 25th January, 2018. Hence, this OA.

6. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36],*** Ld. 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 Army 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 military service. However, today while hearing learned counsel for the applicant fairly stated that the applicant would only be pressing for disability pension pertaining to one ailment i.e., Diabetes Mellitus Type-II and he gives up his claim for all other disabilities.

7. Per contra, Ld. Counsel for the Respondents submits that under the provisions of Regulation 81 of the Pension Regulations for the Army, 2008 (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 military service and is assessed @ 20% or more.

8. Relying on the aforesaid provision, Ld. Counsel for respondents further submits that the aforesaid disabilities of the applicant were assessed @ 15-19% for life as "neither attributable to nor aggravated" by military service and not connected with the military service and as such, his claim

was rejected; thus, the applicant is not entitled for grant of disability 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, it is established that in so far as the disability of Diabetes Mellitus Type-II is concerned, the minimum assessment of the disability cannot be less than 20% in terms of MoD letter No. 16036/DGAFMS/MA (Pens)/Policy dated 20.12.2012, accorded concurrence on 12.05.2023 vide letter No. Air HQ/99801/4/DAV (Med). The only question which needs to be decided is whether the disabilities are attributable to or aggravated by military 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 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 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 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.

12. 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).

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 is allowed and Respondents are directed to grant benefit of disability pension @ 20% for life rounded off to 50% for life in view of judgement of Hon'ble Apex Court in ***Union of India*** vs. ***Ram Avtar (supra)*** from the date of his discharge i.e. 31.08.2011. All other claims stand rejected. The arrears shall, however, be restricted to three years prior to the filing the OA, i.e., 02.04.2018 payable to the applicant within four months of the receipt of a copy of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

15. Consequently, the OA 682/2018 is allowed.

16. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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