

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

67.

OA 851/2023 WITH MA 1329/2023 AND MA 1935/2024

Sgt Vikash Kumar (Retd)	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Mr. Raj Kumar, Advocate
For Respondents	:	Ms. Jyotsna Kaushik, Advocate

CORAM

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

ORDER
15.05.2024

MA 1935/2024

Counter affidavit has been filed. There being some delay in filing the counter affidavit, this application has been filed seeking condonation of delay. Delay condoned. Counter affidavit is taken on record.

2. MA stands disposed of.

MA 1329/2023

3. 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 [(2008) 8 SCC 648), the delay in filing the OA is condoned.

4. MA stands disposed of.

5. 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) To quash and set aside the RMB proceedings and impugned order to the extent they deny the grant of disability element of pension to the applicant.*
- (b) To direct the respondents to grant the disability element of pension @40% broad-banded to 50% with interest @12% p.a. wef date of discharge, by treating the disabilities as attributable to and/ or aggravated by military service.*
- (c) To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.*

6. The applicant was enrolled in the Indian Air Force on 20.06.2001 and discharged from service on 03.06.2021. Even though the applicant is found to be suffering from the two ailments viz, (i) Primary Hypertension assessed @30% and (ii) Non Union Fracture Scaphoid (RT) OPtd (Old) assessed @ 15%. The composite disability for the two ailments has been assessed at 40% for life. 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 pension pertaining to one ailment i.e. Primary Hypertension and he

gives up his claim for all other ailments. The applicant submits that for the purpose of Primary Hypertension, the disability has been assessed @ 30% as is evident from the medical records.

7. 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%.

8. 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.

9. 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 i.e. **03.06.2021** 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.

10. 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.

11. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Ps
OA 851/2023