

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

98.

OA 856/2019 WITH MA 1500/2019

LS RP-II Manish Kumar (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM

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

ORDER
16.02.2024

MA 1500/2019

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 prays for grant of disability pension.

4. The applicant was enrolled in the Indian Navy on 27.01.2003 and discharged from service on 31.01.2018.

The applicant submits that he has suffered from disability - Diabetes Mellitus Type-II @ 30%, Dyslipidemia @ Nil and

Primary Hypertension @ 30% for lifelong and held as NANA by service as is evident from the medical records. However, at the time of arguments, applicant has only pressed for grant of Disability Pension for Diabetes Mellitus Type-II and Primary Hypertension at this stage, and is not pressing for Dyslipidemia @ Nil.

5. 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] 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, we see no reason not to allow the prayer of the applicant with regard to the aforesaid disability.

6. Furthermore, in accordance with the judgment of Hon'ble Supreme Court in *Commander Rakesh Pande v. UOI & Ors. [Civil. Appeal No. (s) 5970/2019]*, we find that the issue pertaining to grant of disability pension for DM-II has been settled. Accordingly, we allow this application and direct the respondents to grant disability element of pension to the applicant which is calculated to be @ 51% for life as per provisions of GMO 2002; chapter 2007, Para 17A which

will be rounded off to 75% for life from the date of retirement i.e. 31.01.2018 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. 5. 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. No order as to costs.

8. Pending miscellaneous application, if any, stands disposed of.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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