

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

OA 867/2019

Ex Sgt Lalan Prasad Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Praveen Kumar, 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

OA 867/2019

Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application seeking grant of disability pension.

2. The applicant was enrolled in the Indian Air Force on 27.07.1998 and discharged from service on 31.07.2018. The applicant is found to be suffering from the two ailments viz. (i) Diabetes Mellitus- Type II and (ii) Dyslipidemia, and the Release Medical Board dated 29th August, 2017 held his disability (a) Diabetes Mellitus-Type II @ 20% for life and (b) Dyslipidemia @ 1-5% or life, the composite assessment of disability for the two ailments have been assessed at 20% 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 pressing for disability element of pension pertaining to one ailment i.e., Diabetes Mellitus Type-II and he gives up his claim for the other ailment.

3. The applicant submits that for the purpose of disability- Diabetes Mellitus Type-II, has been assessed @ 20% for life as is evident from the medical records.

4. 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 Vs. 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.

5. Furthermore, in accordance with the judgment of Hon'ble Supreme Court in Commander Rakesh Pande Vs. Union of India and Ors. [Civil. Appeal No. (s) 5970/2019], decided on 28.11.2019], we find that the issue pertaining to grant of disability pension for DM-II as well as the question of disabilities of permanent nature to be deemed to have been assessed for life, has been settled.

6. As far as reliance of the respondents on the order dated 11.09.2023 in OA 121/2021, AFT (RB, Chennai) titled Ex Sub M Vijaykannan Vs. Union of India and Ors. is concerned, the

said issue has been adequately settled by the judgement of the Principal Bench of this Tribunal in the case of Ex JWO Krishan Kumar Tyagi Vs. Union of India and Ors. (OA 2176/2019) wherein it held that by virtue of the fact that the said judgement did not consider the judgement rendered in Ex. Power Satyaveer Singh [C.A. 7368/2011] as has been upheld by the Hon'ble Supreme Court vide the verdict in Union of India and Anr Vs. Rajbir Singh [Civil Appeal 2904/2011; decided on 13.02.2015] nor the judgement of Hon'ble Supreme Court in Commander Rakesh Pande (supra) wherein Hon'ble Supreme Court has upheld the judgement of this Tribunal in Cdr Rakesh Pande vs Union of India and Ors., [OA 1532/2016 AFT (PB), New Delhi; decided on 06.02.2019] for grant of disability pension for the disability of Diabetes Mellitus, and therefore, in our considered view, the decision in Ex Sub M Vijayakannan (supra) is limited to the facts of that case, and cannot be held to be a binding precedent.

7. Accordingly, we allow this application and direct the respondents to grant disability element of pension for the disability of Diabetes Mellitus Type-II to the applicant @ 20% for life which be rounded off to 50% for life from the date of his retirement 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. However, the arrears will be restricted to three years prior to the date of filing of this

OA i.e. 21.05.2019, in keeping with the law laid down in the case of *Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649]*

8. 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.

9. No order as to costs.

Pronounced in open Court on this 17 day of October, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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