

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

OA 883/2018 with MA 737/2018

Ex JWO Onkar Bahadur Srivastava

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Praveen Kumar, Advocate

For Respondents : Ms. A K Gautam, Sr. CGSC

CORAM :

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

ORDER

MA 737/2018

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 6016 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of *UoI & Ors Vs Tarsem Singh* 2009(1)AISLJ 371 and in *Ex Sep Chain Singh Vs Union of India & Ors* (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 737/2018 is allowed and the delay of 6016 days in filing the OA 883/2018 is thus condoned. The MA is disposed of accordingly.

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OA 883/2018
Ex JWO Onkar Bahadur Srivastava



OA 883/2018

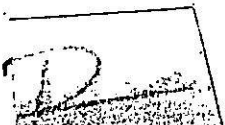
Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

- (a) ***Quash and set aside the impugned letter dated 02 Feb 2018.***
- (b) ***Direct respondents to grant disability pension 15% to 19% (which is less than @20%) and rounding off the same to 50% for life to the applicant with effect from 01 Nov 2001 i.e the date of discharge from service with interest @ 12% p.a till final payment is made.***
- (c) ***Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.***

BRIEF FACTS

2. The applicant was enrolled in Indian Air Force on 08.10.1960 and discharged from service on 31.10.2001 under the clause "On fulfilling the conditions of his enrolment" after rendering 32 years and 23 days of regular service. The applicant was found fit to be released in low medical category CEE(P), for the disability of "Diabetes Mellitus Type-2 (Obese)". The applicant was subjected to a Release Medical Board (RMB) on 07.03.2001 whereby the percentage of

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composite disability was assessed @ 15-19%, however, the net qualifying percentage for the disability was nil for life as the disability was adjudged as neither attributable to nor aggravated by military service.

3. On adjudication, the PCDA(P) Allahabad upheld the recommendations of the RMB and rejected the disability pension claim vide letter no. GTs/AF /Cell /2002 /Dis /Fresh/577 dated 30.07.2002. The outcome of the same was communicated to the applicant vide letter no RO/2703/607282/10/01/P&W(DP) dated 06.09.2002 with an advice that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of letter.

4. The applicant thereafter sent a legal notice dated 12.01.2018 which was replied to by the respondents vide letter Air HQ /99798/1/607282/DAV/DP/CC dated 02.02.2018. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in terms of Section 21 (1) the AFT Act, 2007, we take up the same for consideration.

CONTENTION OF THE PARTIES

5. The learned counsel for the applicant submitted that the applicant joined the IAF on 08.10.1960 and was discharged from the service on 31.10.2001 in the rank of Junior Warrant Officer after rendering 32 years, 23 days of long service in the Indian Air Force.

6. It was further submitted by the learned counsel that the applicant was subjected to a thorough medical examination conducted by the medical board at the time of his entry into service which found the applicant medically fit to join the service in Indian Air Force and he was posted to various Air Force units in varied geographical conditions.

7. It was submitted by the learned counsel that in addition to conditions of service, dietary compulsions of military life including frequent changes in weather and social environment at different geographical locations were the main causes of stress and strain on the applicant.

8. It was further submitted by the learned ocusel of the applicant that prolonged stressful working conditions, strict



military discipline, dietary compulsions and various other socio-geographical factors has immensely contributed to the onset and aggravation of the applicant's disability.

9. The learned counsel for the applicant submitted that the instant case is squarely covered by the judgements of the Hon'ble Supreme Court in the case of **Dharamvir Singh v. Union of India and others** (2013) 7 SCC 316, **Deokinandan Prasad Vs State of Bihar** AIR 1971 SC page 1409, CA No 2904 of 2011 in case of **Union of India & Ors. Vs Rajbir Singh** dated 13 February, 2015.

10. Reliance was also placed as was held by the Tribunal in TA no. 48 of 2009 in WP(C) No. 6324/2007 in case of **Nakhat Bharti Vs UOI & Ors.**, TA No 208 of 2010 (WP (C) No. 9764/2009), in case of **Krishna Singh Vs Union of India**, OA No. 90 of 2014 in case of **Ex AC (U/T) Naresh Kumar Rana Vs UOI & Ors** dated 25.09.2014, wherein similarly situated personnel were given relief.

11. Per contra the learned counsel for the respondents submits that the Diabetes Mellitus Type-2 disability is basically a lifestyle related metabolic disorder and the onset

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occurred in peace station. The learned counsel further submitted that prior to the onset of the disability, the applicant has served only in peace stations since 1969 and the onset of the disability occurred in July 2000 and there has been no close time association of military service with stress and strain or dietary compulsions of field/HAA/CIOps. Hence, the disability is NANA as per para 26 of Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008.

12. The learned counsel for the respondents also submitted that the applicant was overweight and was advised to reduce his weight. The learned counsel for the respondent submitted the weight chart of the applicant which reads as under:-

Date	Type of Med Exam	Actual Weight in KG	Ideal Weight In KG	BMI	Advice
14.07.69	Primary	49	-	-	-
11.08.88	Recategorisation	70	-	-	
19.07.89	Recategorisation	68	-	-	
06.08.91	Recategorisation	73	55.5	-	Reduce weight to IBW by dietary restriction & isotonic physical exercise.
05.04.94	Extension of service	62	-	-	-
30.08.00	Recategorisation	72	60	-	Long walk, 5 km/day
15.02.01	RMB	72	60	-	-

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13. The learned counsel for the respondents submits that the disability of Diabetes Mellitus of the applicant is directly related to his being overweight.

14. The learned counsel for the respondents placed reliance on the orders passed by the Armed Forces Tribunal, Principal Bench at New Delhi in case of **Col (Mrs.) Dropadi Tripathi (Retd.) Vs Union of India & Ors**, in OA 1843 of 2018, decided on 13.04.2023, wherein the claim of disability pension was disallowed because the applicant therein was found to be overweight.

ANALYSIS

15. It is a fact that the applicant vide RMB dated 07.03.2001 has been assessed with the disability of Diabetes Mellitus Type 2 (Obese) @ 15-19% which has been attributed as NANA by the RMB. However the disability of Diabetes Mellitus Type 2 (Obese) cannot be assessed less than 20% as per MoD Policy letter no. 16036/DGAFMS/MA (Pens)/Policy dated 20.07.2012 which lays down guidelines on assessment of disability percentage in Diabetes as under:-



“(a) Diabetes Mellitus (DM) ;

- (i) DM Type II, on Oral Hypoglycaemic agents
(OHA) without Target Organ Damage (TOD) : 20%**
- (ii) DM Type II, on insulin without organ damage : 30%**
- (iii) DM Type II/ Type II with TOD :40% and above**
- As per clinical status”**

16. A bare perusal of the posting profile of the applicant at Annexure R-1 of the RMB reveals that the applicant was posted throughout at peace station prior to the onset of the disability which occurred whilst he was posted to Sirsa in July 2000 which is also a peace station.

17. A perusal of the weight chart of the applicant from July 1969 to February 2001 indicates that the applicant was overweight since August 1988 and the applicant was advised to reduce his weight from August 1991 till his retirement. The applicant in 2000 when the onset of disability occurred was overweight by 20%. The applicant was overweight by more than 15% even at the time of his RMB.

18. The publication released by the National Library of Medicine (National Center for Biotechnology Information) NLM,



titled "Diabetes" on 17.11.2023 was examined by us and which reads to the effect:-

"The accumulation of an excessive amount of body fat can cause type 2 diabetes, and the risk of type 2 diabetes increases linearly with an increase in body mass index. Accordingly, the worldwide increase in the prevalence of obesity has led to a concomitant increase in the prevalence of type 2 diabetes. The cellular and physiological mechanisms responsible for the link between obesity and type 2 diabetes are complex and involve adiposity-induced alterations in β -cell function, adipose tissue biology, and multi-organ insulin resistance, which are often ameliorated and can even be normalized with adequate weight loss."

This bulletin of NLM specifically brings out the effect of overweight/obesity on Diabetes.

19. Additionally, this Tribunal, while dealing with disability pension for disability of "Diabetes Mellitus Type 2", in case of ***Ex MWO Ravi Kant Gupta vs Union of India & Ors.***, in OA no. 47 of 2020 dated 06.12.2023, wherein the claim of disability pension for the disability of Diabetes Mellitus was disallowed because the applicant therein was found to be overweight.



CONCLUSION

20. In view of our aforesaid analysis and the parameters referred to herein above, and the fact that the applicant was overweight prior to the onset of the Diabetes and the correlation between Diabetes Mellitus Type II (Obese) and of being overweight, we hold that the weight of the applicant is a contributory factor towards the onset of the disability of Diabetes Mellitus Type II and that the applicant is thus not entitled to the grant of disability element of pension. We are thus not inclined to grant any relief to the applicant and the O.A 883/2018 stands dismissed.

There is no order as to costs.

Pronounced in the open Court on this day of ¹² November
2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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