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

OA 920/2019 WITH MA 1566/2019

Ex JWO Induchoodan CV ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Harish V. Shankar, Advocate

CORAM

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

ORDER

MA 1566/2019

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

2. MA stands disposed of.

OA 920/2019

3. Invoking Section 14 of Armed Forces Tribunal Act, 2007, the instant OA has been filed by the applicant praying for directing Respondents to grant disability pension from the date of the retirement.

4. The factual matrix of the case is that the applicant was enrolled in the Indian Air Force on 28.07.1992 and discharged on 31.07.2018 after about 28 years of qualifying service. During the Release Medical Board conducted vide AFSMF-15 dated 06.03.2014 prior to his retirement, he was found to be suffering from disabilities - (i) Morbid Obesity (Sleeve Gastrectomy Done) @ 1-5% (ii) Primary Hypertension with TOD (Gd 1 Hypertensive Retinopathy (Old) @ 30% (iii) Obstructive Sleep Apnoea @15-19%, (iv) Diabetes Mellitus Type-II @ 20% and (v) Dyslipidemia @ 1-5% for life while his disabilities were held to be Not Attributable Nor Aggravated (NANA).

5. Learned counsel for the Applicant stresses that the disability was detected in Nov 2013, after more than 21 years of Air Force service due to continuous service stress, and strain of Air Force service, dietary compulsion of service and being posted to different field areas including High Altitude Area and lack to time for proper rest, exercise and walking wherein the causal connection of the disability is clearly established with the Air Force service.

6. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh*** Vs. ***Union of India & Ors***

[2013 (7) SCC 36], learned 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 Air Force 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.

7. Per Contra, learned counsel for the respondents submits that under the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (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 Air Force service and is assessed @ 20% or more.

8. Relying on the aforesaid provision, learned counsel for respondents further submits that the aforesaid disabilities of the applicant were assessed as "neither attributable to nor aggravated" by Air Force service and not connected with the Air Force service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

9. Learned counsel further argues that the weight of the applicant was 62 kg at the time of enrolment, and that gradually gained weight and by the time of onset of the disability, applicant was overweight by around 33-36 kgs, purely due to dietary indiscretion, lack of exercise and a sedentary lifestyle, and his own lack of health consciousness, hence, the disabilities cannot be held attributable to or aggravated by service as he is solely responsible for his unreasonable weight gain in violation of the service requirements of maintaining physical fitness at all times.

10. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the extent of disabilities (ii) and (iv) was assessed to be above 20% which is the bare minimum for grant of disability pension in terms of Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), while other three disabilities (i), (iii) & (v) do not qualify. The only question that arises in the above backdrop is whether disabilities (ii) and (iv) suffered by the applicant were attributable to or aggravated by military service.

11. It is relevant to note that the applicant is constantly

overweight ranging between 14-50 Kgs in the period from 09.01.2006 to 19.12.2016, with his actual weight ranging between 78-117 Kgs as against the Ideal weight of 62-67 Kgs, with the same trend visible before the onset of both the disabilities under consideration.

12. We have further analysed the Re-categorisation Medical Boards conducted since Initial Medical Examination and we find the same trend, with the applicant not reducing the weight even after slew of directions advised by the medical experts including brisk walking, jogging and reducing the weight. However, we observe that the weight has not been reduced, thereby, clearly showcasing that onset of disability is the result of the applicant being alarmingly overweight and therefore, the argument that the applicant suffered the disability due to stress and strain of the service is wholly unfounded on the simple reasoning that the organisation cannot be held liable for the own actions of the applicant.

13. We cannot shy away from the fact, that the disabilities - Primary Hypertension and Diabetes Mellitus is due to interplay of metabolic and lifestyle factors and failure in maintaining the ideal body weight which can be managed

by regular exercise and restricting diet, and the fact that the applicant is alarmingly overweight signifies that the applicant has remained obese over a period of time, thereby, himself inviting the disability, and in such a case, it would be grossly unjustified for us to ignore the aforesaid facts.

14. Applying the above parameters to the case at hand, we are of the view with respect to disabilities - Primary Hypertension and Diabetes Mellitus -II, there is no denial from the fact that if the claimant is himself not responsible enough to control the factors which are well within his voluntary control, he cannot be allowed to garner benefit of such beneficial schemes and provisions.

15. Therefore, in view of our analysis, the OA is liable to be dismissed.

16. Consequently, the OA 920/2019 is dismissed.

17. No order as to costs.

Pronounced in the open Court on 14 day of May, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

Akcs