

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

B.

OA 949/2017 with MA 516/2022

Lt Col Rudra Pratap Singh (Retd.) & Ors. Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Anil Srivastava, Advocate
For Respondents : Mr. V Pattabhi Ram, Advocate for R 1,2,4 & 5,
Mr. Avdhesh Kumar Singh, Advocate for R 3 & 6
Maj A.R. Subramaniam, OIC, Legal Cell

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
01.04.2024

Vide our detailed order of even date we have allowed the OA 949/2017. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

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

COURT NO. 2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 949/2017 with MA 516/2022

- | | |
|---|-----------------|
| 1. Lt Col. Rudra Pratap Singh-MR 4183Y | Applicant No.1 |
| 2. Lt.Col. Krishan Lal Arora-IC19679L | Applicant No.2 |
| 3. Major Devakumar IC 42155W | Applicant No.3 |
| 4. Col Giriraj Singh-IC 34774P | Applicant No.4 |
| 5. Major Rajagopalan-SL3557X | Applicant No.5 |
| 6. Col Gopal Ramtri-IC17651M | Applicant No.6 |
| 7. Lt Col. Sahibzada Mir Kulitich
Khan-IC 28996N | Applicant No.7 |
| 8. Col. G Sai Prasad-MR 03382A | Applicant No.8 |
| 9. Col. D Suguna Raghvan-IC314564 | Applicant No.9 |
| 10. Cdr Satya Pal Sharma-01558R | Applicant No.10 |

... Applicants

Versus

Union of India & Ors.

...Respondents

For Applicant	: Mr. Anil Srivastava, Advocate
For Respondents	: Mr. V Pattabhiram , Advocate for R 1,2,4 & 5 Mr Avdhesh Kumar Singh Adv for R 3 & 6

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

ORDER

MA 516/2022

This is an application filed on behalf of the respondents for
condonation of delay of 1378 days in filing the reply affidavit. In

view of the reasons explained in MA and in the interest of justice, the MA 516/2022 is allowed and the delay in filing the reply affidavit is condoned.

OA 949/2017

The applicants vide the present OA make the following prayers:

- “(a) Direct the respondents to pay disability pension @50% in respect of all the applicants of Group ‘A’, and 75% in respect of all applicants of Group ‘B’ w.e.f. date of their superannuation/discharge or 31.01.2001 whichever is later along with 12% interest on the arrears.*
- (b) That each applicant be awarded the cost of the litigation @ Rs.5,000/- each.*
- (c) To pass any such other and further order or orders as this Hon’ble Tribunal may deem fit and proper in the interest of justice and in the facts and circumstances of the case.”*

2. The MA 741/2017 seeking condonation of delay in filing the present OA was allowed vide order dated 31.05.2017.
3. The applicants of the present OA have taken premature retirement and suffered from disabilities with the percentage of disablement falling within the qualifying quantum from 20% to 60%. The applicants were denied the benefit of the disability element of pension though the disabilities qua the applicants

were opined as being attributable to or aggravated by military service as they had taken premature retirement from service.

4. The applicants submit that pursuant to the orders of this Tribunal in OA 336/2011 in the case of **Major (Retd) Rajesh Kumar Bhardwaj v. Union of India & Ors.** the matter is no longer *res integra* and that each of the applicants to the present OA is entitled to the grant of the disability element of pension in terms of the Government of India, MoD, letter No.16(5)/2008/D(Pension/Policy) dated 19.05.2017 which makes the grant of the disability element of pension applicable even to the pre-2006 retirees w.e.f. 01.01.2006. *Inter alia* the applicants submit that each of them are also entitled to the broadbanding of the disability element of pension to which they are entitled in terms of the Government of India, MoD letter NO.1 (21.97/D/Pension Policy) dated 31.01.2001 and the verdict of the Hon'ble Supreme Court in the case of **Union of India & Ors Vs Ram Avtar & Ors** (Civil Appeal No.418/2012, whereby the broadbanding of the disability element of pension to the nearest 50%, 75% or 100% as per the percentage of the disability has been allowed. The details of the applicants have been submitted through the written synopsis on behalf of the applicants as under:

S. No.	Per No.	Rank	Name	Dt of Commission	Dt of PMR	% of disability	Remarks	Broadbanding (Apparently broadbanding sought)
1	MR 4183	Lt.Col	Rudra Pratap Singh	16.04.80	30.4.01	20%	Aggravated Pg NO.17 & 18 of OA	Broadbanding to 30%
2.	IC 19679L	Lt.Col	K L Arora	13.2.67	23.2.88	20%	Aggravated Pg 32 & 33	Broadbanding to 50%
3	IC 42155	Maj	Devkumar RN	6.9.84	4.2.01	20%	Aggravated Pg 48 & 49	Broadbanded to 50%
4	IC 34774P	Col	Giriraj Singh	17.12.77	18.12.99	30%	Aggravated Pg 62 & 64	Broadbanded to 50%

5	SL 3557X	Maj	C Rajgopalan	26.7.86	13.10.03	20%	NANA Pg 78	NIL
6	IC 17651M	Col	Gopal Ramtri	11.6.67	18.10.94	20%	Aggravated Pg 100 ^ 101	Broadbanded to 50%
7	IC 28996	Lt Col	Sahibzada MK Khan	12.1.69	01.3.96	30%	Aggravated Pg 107 & 107	Broadbanded to 50%
8	MR 03381A	Col	GS Sai Prasad	11.6.71	16.10.03	60%	Aggravated/NANA Pg 102 121	30% Aggravated 30%NANA
9	IC 31456	Col	D Sugna Raghva	21.12.75	21.12.04	60%	Aggravated NANA Pg 138	20% Aggravated Rest NANA 40%
10	01558R	Cdr	SP Sharma	7.1.74	30.4.01	20%	Aggravated Pg 144 145	Broadbanded to 50%

5. On a perusal of the claim of the applicant No. 1 Lt.Col. Rudra Pratap Singh, as per Annexure A-2, the Medical Board proceedings, the said applicant suffered from the disability of Primary Hypertension - and Fracture assessed @30% and 20% respectively which was opined by the Release Medical Board dated 27.01.2001 as being aggravated by military service with duration of 05years.

6. The applicant No. 2, Krishan Lal Arora, as per Release Medical Board proceedings dated 08.02.1988 was found to be suffering from Osteoarthritis both knees joints which was opined by the RMB to be aggravated by military service with percentage of disablement @20% for two years.

7. The applicant No.3, Major Dev Kumar RN- though was released in the Category of A-3 (P), as per the Release Medical Board dated 12.02.2001, the said applicant was found to be suffering from disability of Central Serous Retinopathy(BE) (Effects) of 362 VGT opined by the RMB to be aggravated by military service and which was assessed @20% for two years and he was released in medical classification S1H1A1(P) E-2(P).

8. The applicant No. 4, Col Giriraj Singh, as per the Release Medical Board dated 12.10.1999, was found to be suffering from the disability of Autosomal Dominant Cerebellar Ataxia and Primary Hypertension which was opined to be aggravated by military service with percentage of disability @20% and 30% respectively for two years.

9. The applicant No. 5, Major C Rajgopalan was suffering from Cervical Spondylosis as opined by the Release Medical Board dated 23.08.2003 with percentage of disablement @20% for life which was however opined to be neither attributable to nor aggravated by military service.

10. The applicant No. 6- Col. Gopal Ramtri, as per the Release Medical Board dated 16.09.1994 was found to be suffering from the disability of Primary Hypertension(Old) ICD No.401,V-67 which was opined to be aggravated by military service with percentage of disablement @30% with a duration of 5 years.

11. The applicant No. 7- Lt Col. Sahibzada M K Khan-as per the Medical Board Proceedings dated 24.01.1996 was found to be suffering from the disability of Spondylosis Lumber Spine lvh.5 T-21 VG-7 which was opined by the Medical Board Proceedings to be aggravated by military service with percentage of disablement @30% for two years and was released in S1H1A2P1E1 category.

12. The applicant No. 8-Col GS Saiprasad-as per the Medical Board proceedings dated 28.08.2003 was found to be suffering from the disability

PIVD C 5,6, 7(M503) which was opined to be aggravated by military service with 30% disablement. However, qua the disability CAD Single Vessel LAD Stenosis (I24.0) with percentage of disablement @30% for life, the same was opined as being neither attributable to nor aggravated by military service.

13. The applicant No.9 –Col D Sugna Raghavan- as per the Medical Board proceedings dated 03.12.2004 was found to be suffering from the disabilities of Primary Hypertension, Diabetes Mellitus, MVP, Partial Seizure and Recurrent (LT) Inguinal Hernia, of which only Recurrent (LT) Inguinal Hernia was opined to be aggravated by military service with composite percentage of disablement @60% (Permanent) for life.

14. As regards the applicant No. 10- Cdr S P Sharma- vide the Medical Board proceedings dated 28.03.2001, the disability of Primary Hypertension with which he was suffering from was opined to be aggravated by military service with percentage of disablement @20% and qua Obesity @1.5%, it being opined to be a constitutional disorder not related to service with composite disablement for five years.

15. Further, a submission is indicated to have been made through the OA to the effect that even in relation to the disabilities that the applicant No.5 and applicant No.8 and applicant No.9 suffered from having been opined by the Medical Boards which examined them being neither attributable to nor aggravated by military service, each of the said applicants were also entitled for the grant of the disability element of

pension in as much as they had all joined the military service after a thorough medical examination and on having been found fit to so join in SHAPE 1.

CONCLUSION

16. To the extent that each of the applicants were denied the grant of the disability element of pension for having proceeded on premature retirement prior to 01.01.2006, in view of the Govt. of India letter No.16(5)/2008/D(Pen/Policy) dated 29.09.2009, it is apparent vide order dated 07.02.2012 in OA 336/2011 **Maj. (Retd) Rajesh Kumar Bhardwaj vs. Union of India & Ors.** of the AFT(PB), New Delhi and the said notification dated 29.09.2009 issued by the Govt of India, that the distinction between pre and post 01.01.2006 retirees for the grant of the disability element of pension to those who had retired voluntarily prior to 01.01.2006 has been struck off and the said aspect is no more *res integra* as is also brought forth fairly through the averments made in the counter affidavit dated 20.10.2002 filed on behalf of the respondents vide Para 4.12 thereto which reads to the effect:

"Therefore, in view of the ibid Policy the case of the petitioners for initial disability pension may be processed. However, the petitioners are not eligible for benefits of broad banding also as they do not fulfill the eligibility

condition for entitlement of broad banding as give in terms of Govt of India, Ministry of Def Letter No. 1(2)/97/D(Pen-C) dated 31 Jan 2001. Broadbanding benefit is extended to pers who were invalided out of service. Other than invalidated out pers, broadbanding benefits are not granted to any one as per policy in vogue. In the instant case, petitioners are premature retirees and not a case of invalidation."

17. Thus in the event of the 10 applicants being held entitled to the grant of the disability element of pension even though they retired pre- 01.01.2006, each of the said applicants have to be held eligible to the broadbanding thereof in terms of the verdict of the Hon'ble Supreme Court in case of ***Union of India & Ors Vs Ram Avtar*** (supra).

18. The disability of **applicant No.5-** Major C Rajgopalan ID - Cervical Spondylosis was assessed @20% for life by the RMB and opined as being neither attributable to nor aggravated by military service.

19. The disability of applicant No.8- GS Sai Prasad was assessed as per the Medical Board dated 28.08.2003 in relation to two IDs- PIVD-C5,6,7 with percentage of disablement @30% for life and the second ID-CAD(Single vessel CAD Stent) which was held to be neither attributable to nor aggravated by military service.

20. Qua the disability of the **applicant No.9 Col D Sugna Ragavan**, the Medical Board dated 03.12.2004 assessed the ID of Primary Hypertension @20% for life but held it to be as being neither attributable to nor aggravated by military service as the applicant was in peace station, The ID- Diabetes Mellitus Type-II assessed @ 6-10% for life was opined as NANA being a metabolic disorder. Even qua the disabilities of MVP, Partial Seizure it was opined by the said RMB that the said disabilities were NANA.

21. **The determination of the aspect as to whether the applicants in relation to the said disabilities are entitled to the grant of the disability element of pension can be made only by giving liberty to the respondents to respond to the contentions raised by the said applicants in relation to the said disabilities which the said applicants claim to be attributable to or aggravated by military service.**

22. **The applicant No.1 Lt. Col. Rudra Pratap Singh, applicant No.2 Lt.Col. Krishan Lal Arora, applicant No.3 Major Devakumar, applicant No.4 Col Giriraj Singh, applicant No. Col Gopal Rantri, applicant No.7 Lt. Col. Sahibzada Mir Kulitich Khan and applicant No.10 Cdr Satya Pal Sharma in terms of the Govt of India Letter dated 31.01.2001 Para 7.5 and in terms of the verdict of the Hon'ble Supreme Court in Commander Rakesh Pande vs UOI & Ors (CA no. 5970/2019) thereof have to be held to have suffered from disabilities with duration for life.**

23. In these circumstances, the **OA 949/2017 is partly allowed** in relation to the applicants i.e.

S. N o.	Per No.	Rank	Name	Dt of Commission	Dt of PMR	% of disability	Remarks	Directed to be Broadbanded As under
1	MR 4183	Lt.Col	Rudra Pratap Singh	16.04.80	30.4.01	20%	Aggravated Pg. NO.17 & 18 of OA	Broadbanded to 50% for life
2	IC 1967 9L	Lt.Col	K L Arora	13.2.67	23.2.88	20%	Aggravated Pg 32 & 33	Broadbanded to 50% for life
3	IC 4215 5	Maj	Devkumar RN	6.9.84	4.2.01	20%	Aggravated Pg 48 & 49	Broadbanded to 50% for life
4	IC 3477 4P	Col	Giriraj Singh	17.12.77	18.12.99	30%	Aggravated Pg 62 64	Broadbanded to 50% for life
6	IC 1765 1M	Col	Gopal Ramtri	11.6.67	18.10.94	20%	Aggravated Pg 100 & 101	Broadbanded to 50% for life
7	IC 2899 6	Lt Col	Sahibzada MK Khan	12.1.69	01.3.96	30%	Aggravated Pg 107 & 107	Broadbanded to 50% for life
10	0155 8R	Cdr	SP Sharma	7.1.74	30.4.01	20%	Aggravated Pg 144 145	Broadbanded to 50%

Lt.Col Rudra Pratap Singh, Lt. Col K L Arora, Major Dev Kumar RN, Col. Giriraj Singh, Col Gopal Ramtri, Lt.Col. Sahibzada MK Khan, Cdr S.P.Sharma are held entitled to the grant of the disability element of pension with percentage of disabilities as assessed by the RMB w.e.f. date of discharge with broadbanded @50% for life. However, in terms of the verdict of the Hon'ble Supreme Court in **Tarsem Singh Vs Union of India & Ors**, the arrears for the grant of the disability element of pension shall commence to

run from a period of three years prior to the date of institution of the present OA which was instituted on 12.05.2017.

24. As regards the applicant No.8. **Col. G. S. Saiprasad**, he is entitled to the grant of disability element of pension in relation to ID PIVD-C5,6,7 with percentage of disablement @30% for life to be broadbanded to 50% for life w.e.f. from the date of discharge with arrears to be paid to commence to run from a period three years prior to the date of institution of the present. *As* **regards the disability ID-CAD(Single Vessel CAD STEN) qua this applicant, it would be open to this applicant to seek redressal in accordance with law by filing a separate OA in relation thereto which is permitted to be filed within 45 days from the date of the pronouncement of this order, which if so filed shall be decided in accordance with law.**

25. Likewise in relation to the applicant **Col. D Sugna Ragavan**-applicant No.9, in relation to the disabilities, he is entitled to the grant of the disability element of pension in relation to the disability of Recurrent (LT) Inguinal Hernia assessed @20% and Partial Seizure assessed @20% with broadbanding thereof in terms of the verdict of the Hon'ble Supreme Court *in Ram Arta* (supra) which the Release Medical Board opined to be aggravated by military service with percentage of disablement @20% for life to be broadbanded to 50% for life. **As regards the prayer for the grant of the disability element of pension in relation to Primary Hypertension, Diabetes Mellitus-Type-II, MVP and the disability in relation to Partial**

Seizure which the Medical Board opined as being neither attributable to nor aggravated by military service, it is open to the said applicant to seek redressal likewise as is applicant No.5, by filing separate OAs which are permitted to be filed within 45 days from the pronouncement of this order, which if so filed shall be decided in accordance with law.

26. The OA is thus disposed of accordingly.

Pronounced in the open Court on the

1st day of April, 2024.

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

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/chanana/