

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

76.

OA 954/2022 with MA 1674/2024

Cdr Raghbir Singh (Retd)	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Mr. Shakti Chand Jaidwal, Advocate
For Respondents	:	Mr. Satya Ranjan Swain, Advocate

CORAM

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

O R D E R
01.05.2024

MA 1674/2024

For the averments made in the application delay in filing the counter affidavit is condoned. Counter affidavit is taken on record.

2. MA stands disposed of.

OA 954/2022

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to accept the disabilities of the applicant as attributable to/aggravated by military service and grant disability element of pension @40% rounded off to 50% with effect from the

date of retirement of the applicant; along with all consequential benefits.

4. The applicant was enrolled in the **Indian Navy** on **14.03.1988** and retired on **31.07.2020**. The Release Medical Board dated **10.10.2019** held that the applicant was fit to be discharged from service in composite low medical category S2A2(P) for the disability – Coronary Artery Disease (SVD-LAD to PTCA Done)Mild LV Dysfunction @40% for life, the qualifying element for disability pension was also recorded as 40% for life on account of disabilities being treated as attributable to but not aggravated by military service.

5. Placing reliance on the judgement of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & 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 Indian Navy 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.

6. Per Contra, Learned Counsel for the respondents submits that under the provisions of Regulation 28 of the Navy Pension Regulations, 1964, the primary condition for the grant of disability pension is discharge from service on account of a disability which is attributable to or aggravated by military service and is assessed @ 20% or more.

7. Relying on the aforesaid provision, Learned Counsel for respondents further submits that even though the aforesaid disability of the applicant was assessed as attributable to military service due to stress and strain vide 14 days charter of duties and awarded 40% disablement and was forwarded to O/o PIFA (N) for financial concurrence but the same was not processed stating that there is no causal connection between the disability and military service as onset of disability was at peace station.

8. In response to the above statement made by the respondents, learned counsel for the applicant submits that applicant's disability meets twin criteria specified for grant of disability pension in terms of Regulation 28 of the Navy (Pension) Regulations, 1964, i.e. as his disability has been conceded as attributable to military service by the RMB with percentage assessed @ 40% for life, therefore, rejection of his

initial claim for disability pension by PIFA by stating that causal connection between the disability and military service is not established and rejection of his both appeals without assigning any reason is contrary to Regulation 28 of Navy (Pension) Regulations, 1964.

9. 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 disability was assessed to be above 20% which is the bare minimum for grant of disability pension in terms of Regulation 28 of the Navy Pension Regulations, 1964. The only question that arises in the above backdrop is whether disability suffered by the applicant was attributable to or aggravated by military service.

10. The issue of attributability of disease is no longer res integra in view of the verdict of the Hon'ble Apex Court in *Dharamvir Singh v. Union of India (supra)*, 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 commission into the Naval Service. Furthermore, we find that the applicant is within the permissible weight limit.

11. Regarding broadbending benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in *Union of India v. Ram Avtar*, (Civil Appeal No. 418 of 2012) and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

12. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of medical disease/disability, the disability must be presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service.

13. Therefore, in view of our analysis, the OA is allowed and respondents are directed to grant benefit of disability pension @ 40% for life rounded off to 50% in view of judgement of Hon'ble Apex Court in *Union of India versus Ram Avtar (supra)* from the date of discharge i.e. 31.07.2020.

The arrears shall be disbursed to the applicant within four months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

14. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Priya