

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

OA 957/2018 WITH MA 850/2018

Sqn Ldr Amarjeet Singh (Retd) ... Applicant  
Versus  
Union of India and Ors. ... Respondents

For Applicant : Mr. Praveen Kumar, Advocate  
For Respondents : Gp Capt Karan Singh Bhati, Sr.CGSC

CORAM

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

ORDER

MA 850/2018

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.

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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 consider his second disability as attributable to/aggravated by military service and grant disability element of pension @80% rounded of to 100% with

effect from the date of invalidment of the applicant; along with all consequential benefits.

4. The applicant was commissioned in the Indian Air Force on 22.06.1963 and was invalidated out of service on 17.07.1982. The Invaliding Medical Board dated 03.01.1982 found him suffering from ID(i) Compression Fracture LV 5 @ 70% for 2 years held as attributable to service and ID(ii) Diabetes Mellitus Type@ 20% for 2 years and held as neither attributable nor aggravated by service. Subsequently, the applicant was granted disability pension only for ID(i) Compression Fracture LV 5 @ 70% w.e.f 17.07.1982.

5. A Re-survey Medical Board was conducted on 10.10.2002 which assessed his ID (i) Compression Fracture LV 5 @ 60% for life and ID (ii) Diabetes Mellitus Type @20% for life. Hence his disability pension was revised w.e.f 10.10.2002 @60% for life for ID (i) Compression Fracture LV-5. Further, the PCDA(Pensions) in accordance with GoI letter dated 19.01.2010 and Circular No.429 dated 04.03.2010 granted him the benefit of broadbanding from 60% to 75% for life w.e.f 01.07.2009.

6. The claim of the applicant dated 03.10.2017 for grant of

disability element of pension for ID(ii) Diabetes Mellitus was rejected vide HQ letter No. Air HQ/99797/Gen/Dis/O/DAV-1(B) dated 23.01.2018 stating that the aforesaid ID (ii) was considered as neither attributable to nor aggravated by military service. He further submitted a Legal Notice-Cum-Representation dated 16.02.2018 demanding grant of disability element for ID (ii) and benefit of broadbanding @100% which was rejected vide letter dated 21.03.2018. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

7. Placing reliance on the judgment of the Hon'ble Supreme Court in Dharamvir Singh Vs. 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 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 Air Force service. Further the injury sustained on duty was due to the stress and strain of service by arguing that the applicant had met with the accident while performing his duties, therefore, he is entitled to

the aforesaid benefit and claim made by him in this OA. He further stated that the applicant was diagnosed with ID(ii) Diabetes Mellitus @ 20% in 1977 and should be granted disability element of pension for ID(ii) w.e.f 17.07.1982 (date of invalidation).

8. Per Contra, learned counsel for the respondents submits that under the provisions of Regulation 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. Relying on the aforesaid provision, Learned Counsel for respondents further submits that the aforesaid ID (ii) Diabetes Mellitus, was assessed as "neither attributable to nor aggravated" hence the applicant is not eligible for disability pension for ID(ii).

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 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). Now, the only

question that arises in the above backdrop is whether the 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 military Service.

11. Furthermore, the issue regarding the attributability of Diabetes Mellitus has been settled by the Hon'ble Supreme Court in *Commander Rakesh Pande Vs. Union of India* (Civil Appeal No. 5970 of 2019) wherein the Apex Court has not only held that the Diabetes Mellitus is a disease which is of permanent nature and will entitle the applicant to disability pension, but also observed that in case where the disability is of permanent nature, the disability assessed by the Medical Board shall be treated for life and cannot be restricted for specific period.

12. Regarding broadbanding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in *Union*

of India Vs. 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).

13. Applying the above parameters to the case at hand, we are of the view that the applicant was invalidated out 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.

14. Therefore, in view of our analysis, the OA is allowed and respondents are directed to grant benefit of disability element of pension compositely @ 80% for life (ID (i) Compression Fracture LV 5 for @60%, and (ii) DIABETES MELLITUS @ 20%).



15. Noting the fact that applicant is already getting the disability pension rounded off to 75% from the date of RSMB dated 10.10.2002, the same is directed to be enhanced to 80% rounded off to 100% for life in view of judgment of Hon'ble Apex Court in *Union of India versus Ram Avtar (supra)*. However, the arrears for the grant of Disability Pension for DM-II shall be restricted to three years prior to filing of OA in view of the *Tarsem Singh (supra)*.

16. Consequently, the OA 957/2018 is allowed.

17. No order as to costs.

18. Miscellaneous applications, if any, pending stand closed.

Pronounced in the open Court on 5<sup>th</sup> day of December, 2024.

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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

Akc