

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

OA 476/2019 WITH MA 1044/2019

Ex JWO Devendra Singh Adhikari ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Ms. Barkha Babbar, Advocate

CORAM

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

ORDER

MA 1044/2019

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 476/2019

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 @60% rounded off to 75% with effect from the date of retirement of the applicant

with interest @12% p.a. till final payment is made.

4. The applicant was enrolled in the Indian Air Force on 15.11.1978 and retired on 31.05.2018 after serving for 39 years and 20 days of regular service. The Release Medical Board dated 07.12.2017 held that the applicant was fit to be discharged from service in composite low medical category A4G4(P) for the disabilities - (i) Functional Iron Deficiency (Old) @ 15-19% for life, (ii) PRIMARY HYPERTENSION @30% for life (iii) DYSLIPIDEMIA (Old) @ 1-5% for life and (iv) DM Type-II (Old) @20% for life, with composite disability @ 60% for life while the qualifying element for disability pension was recorded as NIL for life on account of disabilities being treated as neither attributable to nor aggravated by military service (NANA).

5. The claim of the applicant for grant of disability pension was rejected vide letter dated 129.06.2018 and the same was communicated to the applicant vide letter No. Air HQ /99798/1/ 623068/05/18/DAV(DP/RMB) dated 08.08.2018 stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service. Against the said rejection, applicant preferred a first appeal dated 10.09.2018 which was rejected vide letter no. Air

HQ/ 99798 /5/167/2019/623068/ DP/AV-III dated 28.11.2019. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

6. Placing reliance on the judgement 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 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. 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 second and fourth disability was assessed to be above 20% and above 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). Since, the first and third disability does not fulfill the requisite of 20%, it does not warrant any consideration.

10. That apart, with regard to the first disability the contention of the applicant that the benefit of the doubt of dietary compulsions may be granted to individual serving in field, we find that the iron deficiency occurs due to inadequate dietary intake of iron and that the veteran has served in peace all throughout his career, hence the benefit of dietary compulsions can not be given to the applicant when diet is in his control. Thus, the decision of RMB on first disability does not warrant any interference.

11. Now, the only question that arises in the above backdrop is whether the first and third disability suffered by the applicant was attributable to or aggravated by military service.

12. We find that 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 Vs. Union of India (supra), wherein it is clearly spelt out that any disease contracted during service is presumed to be attributable to Air Force service, if there is no record of any ailment at the time of enrollment into the Air Force Service.

13. 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 & Ors. (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.

14. 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).

15. 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 air force service.

16. Therefore, in view of our analysis, the OA is partly allowed and Respondents are directed to grant benefit of disability element of pension compositely @ 44.8% for life (for DIABETES MELLITUS Type II @ 20%, and PRIMARY HYPERTENSION @ 22.8% for life), rounded off to 50% in view of judgement of Hon'ble Apex Court in Ram Avtar (supra) from the date of discharge i.e. 31.05.2018. 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.

17. Consequently, the OA 476/2019 is partly allowed.
18. No order as to costs.
19. Pending miscellaneous applications, if any, pending stand closed.

Pronounced in the open Court on 3rd day of April, 2025.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

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

/Akc/

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.

17. Consequently, the OA 476/2019 is partly allowed.

18. No order as to costs.

19. Pending miscellaneous applications, if any, pending stand closed.

Pronounced in the open Court on 30th day of April, 2025.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

/Akc/