

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

OA 833/2019
WITH
MA 1474/2019

HFO KC Dogra (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate
For Respondents : Dr Vijendra Singh Mahndiyan, Advocate

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

ORDER

MA 1474/2019

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the MA is allowed condoning the delay in filing the OA.

OA 833/2019

2. Invoking the jurisdiction under Section 14 of the Armed Forces Tribunal Act, 2007, the instant OA has been filed praying for the following reliefs:

“(a) To direct the respondents to grant the disability pension @30% alongwith arrears by treating the onset as attributable and aggravated by the Military Service.

(b) To direct the respondents to grant the benefit of rounding of disability of the applicant to @50% for life in terms of law settled by Hon'ble Supreme Court of India in Ram Avtar case (supra) as well as in a catena of judgments by this Hon'ble Tribunal.

(c) To direct the respondents to pay the due arrears of disability pension with interest @12% p.a. with effect from the date of retirement with all the consequential benefits.

(d) To pass such order or orders, directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."

3. The applicant was enrolled in the Indian Air Force (IAF) on 21.01.1969 and discharged on 31.12.2008 on completion of 39 years and 346 days of regular service. The Release Medical Board dated 24.01.2008 held that the applicant was fit to be discharged from service in composite low medical category A4G2(P) for the disability Primary Hypertension @30% for life and assessed as neither attributable to nor aggravated by military service and his RMB was approved by the Dy PMO(S) HQ WAC, IAF dated 08.03.2008.

4. The initial claim for disability pension of the applicant was adjudicated by the AOC AFRO and the competent authority was rejected the disability pension claim vide letter No RO/2703/242500/12/08/P&W(DP/RMB) dated 20.03.2008 concluded that the disability was considered as neither attributable to nor aggravated by service (NANA) with the findings of the RMB. Aggrieved by

the same, the applicant submitted 1st appeal dated 24.10.2018 after a lapse of 10 years and 07 months from initial rejection was rejected by the competent authority being a time barred case and intimated the applicant vide Air HQ letter No Air HQ/99798/5/TBS/242500/Appeal/AV-III dated 13.03.2019. The second appeal submitted by the applicant dated 25.04.2019 was not in order since his first appeal was not considered and rejected and was intimated to the applicant vide letter No Air HQ/99798/5/TBS/242500/Appeal/AV-III dated 06.06.2019.

5. Placing reliance on the judgement of the Hon'ble Supreme Court in Dharamvir Singh Vs. UOI & Ors [2013 (7) SCC 36], learned counsel for the 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 Army 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 as per Rule 153 of Pension Regulations for the

IAF,1961 (Part-I) the primary conditions for grant of disability pension are “unless otherwise specially provided, disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed @20% or over”.

7. Relying on the aforesaid provision, learned counsel for the respondents further submits that the disability of Primary Hypertension of the applicant was 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.

8. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the extent of disability, i.e., (c) Primary Hypertension was assessed to be above 30% which is the bare minimum for grant of disability pension in terms of Rule 153 of Pension Regulations for the IAF,1961 (Part-I)

9. It is pertinent to note that at the time of the RMB, the applicant is grossly overweight, with an actual weight of 75

Kg as against an ideal weight of 64 Kg. We cannot ignore the fact that the applicant was overweight thus bringing us to the conclusion that the Primary Hypertension is attributable to his being overweight rather than the stress and strain of service, as asserted by the applicant. Therefore, we hold that the organization cannot be held liable for the applicant's personal health choices and actions.

10. We cannot shy away from the fact, that the disability, i.e., Primary Hypertension 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 being overweight signifies that he has remained obese over a period of time, thereby, himself inviting the disabilities, and in such a case, it would be grossly unjustified for us to ignore the aforesaid facts.

11. Applying the above parameters to the case at hand, we are of the view with respect to disability of Primary Hypertension, 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. Therefore, the applicant is not entitled for disability pension for the disability of Primary Hypertension.

12. Therefore, in view of our analysis, this OA dismissed being devoid of merit.

13. No order as to costs.

14. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this ^H24 day of February, 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Akc