

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

OA 2586/2023 WITH MA 3663/2023

JWO Udaibeer Singh Saharavat (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Deepak Kumar, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate

CORAM

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

O R D E R

MA 3663/2023

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 2586/2023

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

“(a) *Quash and set aside the impugned order(s) No.1 and 2*

vide dated 18 Oct 2022 and 28 Feb 2023 to the extent this order deny the grant of disability pension to the applicant.

(b) Direct the respondents to treat the disability of the applicant namely, primary hypertension (old) 30% for life long in which composite disability was assessed as 30% for life long as mentioned in RMB; as attributable and aggravated by military service (I.A.F.)

(c) Direct the respondents to grant disability element of pension to the applicant @50% for life w.e.f. 31 Mar 2022 (date of retirement), as degree of his disablement for because of the said disability has been assessed @30% for life in the RMB.

(d) Direct the respondents to pay disability element of pension to the applicant at an enhanced rate @ of 50% for life w.e.f 31.03.2022 by rounding off/broad-banding Applicant's disability from 30% to 50% as per Govt. Policy dated 31.01.2001 r/w 23.01.2018.

(e) Direct the respondents to pay the applicant an interest @10% per annum/month or above or as deems fit and proper by the Hon'ble Court/Tribunal on the arrears of enhanced disability pension w.e.f. 31.03.2022.

4. The brief facts of the case are that the applicant was commissioned in the Indian Air Force on 31.03.1987 and discharged from service on 31.03.2022 after about 35 years of qualifying service. The Release Medical Board held that the applicant was fit to be discharged from service in composite low medical category A4G4 (Temp) (T-12) for the disability Primary Hypertension (Old) @ 30% for life, with composite disability 30% for life while the qualifying element for disability pension was

recorded as NIL for life on account of disability being treated as neither attributable to nor aggravated by military service (NANA).

5. It is stated by the applicant that his initial claim for disability element of pension was rejected by the adjudicating authority vide their letter No. HQ/99798/1/704984/03/22/DAV (DP/RMB) dated 18.10.2022. Against the said rejection, the applicant preferred a first appeal dated 04.11.2022 and the same has not been replied by the respondents. Later on the applicant sent a legal notice dated 13.01.2023 and the same was rejected by the respondents vide their letter dated 28.02.2023. Aggrieved by the same, the applicant has approached this Tribunal.

6. Placing reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union of India and Ors.* [2013 (7) SCC 36], learned counsel for applicant argues that after thorough medical examination the applicant was enrolled into Air Force service and there was no note of any disability recorded in his service records. It is further contended that he served in the Air Force at various places in different environmental and service conditions in his prolonged service; therefore, any disability occurring during the period of his service is deemed to be

attributable to or aggravated by Air Force service.

7. Per Contra, learned counsel for the respondents submits that as per Rule 153 of Pension for Air Force, 1961 (Part-I), the primary condition for the grant of disability pension are “ Unless otherwise specifically provided, “a 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 such service and is assessed at 20 per cent or over may, on retirement, be awarded a disability pension consisting of a service element and a disability element in accordance with the regulations in this section”. In other words, disability pension is granted to those who fulfill the following two criteria simultaneously: (i) Disability must be either attributable to or aggravated by service and (ii) Degree of disablement should be assessed at 20% or more.

8. Relying on the aforesaid provision, learned counsel for respondents further submits that the aforesaid disability of the applicant was assessed as “neither attributable to nor aggravated” by Air Force services that caused non-fulfillment of the criteria (i) as mentioned above and as such, his claim was rejected; thus, the

applicant is not entitled for grant of disability element of 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 view 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 element of pension in terms of the Pension Regulations for the Air Force. The only question that arises in the above backdrop is, whether disability suffered by the applicant was attributable to or aggravated by Air Force 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 the case of Dharamvir Singh (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. Regarding broad-banding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in the case of 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 18.04.2016 has issued instructions for implementation of the Hon'ble Supreme Court's order in the case of Ram Avtar (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 Air Force service.

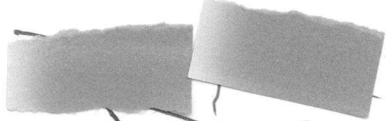
13. Therefore, in view of our analysis, this application is allowed and respondents are directed to grant the benefit of the disability element of pension compositely @ 30% for life [for Primary Hypertension Old @ 30% for life], rounded off to 50% in view of the judgment of the Hon'ble Apex Court in the case of Union of India Vs. Ram Avtar (supra) from the date of discharge, i.e., 31.03.2022.

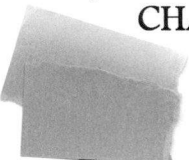
14. The arrears shall be disbursed to the applicant within three months from the date of receipt of a copy of this order failing which he shall earn interest @ 6% p.a. till the actual date of payment.

15. No order as to costs.

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

Pronounced in open Court on 4th day of September, 2025.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


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

PS