

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

OA 4236/2023

WITH

MA 5553/2023

HFO Ram Autar (Retd)	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	: Mr. Kitendra Tiwari, Advocate
For Respondents	: Ms. Jyotsna Kaushik, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

Dated: 2 nd February, 2026

ORDER

MA 5553/2023

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay in filing the present OA. In view of the judgment of the Hon'ble Supreme Court in the matter of Union of India and Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371] and the reasons mentioned in the application, the delay in filing the OA is condoned. MA stands disposed of.

2. The applicant, through the medium of this Original Application filed under Section 14 of the Armed Forces Tribunal Act, 2007, seeks the following reliefs:

- (a) *Quash and set aside the impugned letter dated 10 Nov 2023.*
- (b) *Direct respondents to grant disability pension @ 50% after rounding off from 30% lifelong for life to the applicant with effect from 01 Junn 2008, i.e., the next date of discharge from service with interest @12% p.a. till final payment is made.*
- (c) *Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.*

3. The facts in nutshell are that after being enrolled in the Indian Air Force in the year 1970 and serving at different operational/combatant units, the applicant was finally discharged from service on 31st May 2008. The applicant also participated during Indo Pak war in the year 1971 and is a holder of various star medals. During his service, at different period of times he was detailed temporarily for Guard duties in the nights and field training. During his service period, the applicant also used to travel frequently, away from his family, for temporary duties and attachments for various courses, which as contended, resulted in the disabilities of (i) **conductive hearing loss assessed @ 11-14%** and (ii) **Diabetes Mellitus Type II @20%**. The onset of these disabilities is stated to be in 2005 while the applicant was posted

at Kanpur. The composite assessment of both the disabilities has been made @ 30% but held neither attributable to nor aggravated by military service. It is the submission of learned counsel for the applicant that even after found in low medical category in the year 2005, the applicant continued to work till 31st May, 2008, when he was finally discharged from service.

4. Further contention of the applicant's counsel is that at the time of entry into military service the applicant was in fit medical and physical condition and there is no record of any disability therefore, there is a strong presumption that occurrence of his disabilities after entry into service are because of service conditions and these should be held to be attributable to and aggravated by military service. His further contention is that denial of disability pension to the applicant is arbitrary and against the settled position of law by the Hon'ble Supreme Court and this Tribunal.

5. The prayer for grant of disability pension was dismissed by the respondents on 31st July, 2007. Thereafter, the First Appeal filed on 29th July, 2023, as per the respondents, could not be processed, the same having been filed beyond the maximum time limit of five years after initial rejection of disability claim.

6. In support of his submissions, the learned counsel for the applicant has placed reliance on the following judgments of the Hon'ble Supreme Court and also this Tribunal:

- (i) Deokinandan Prasad Vs. State of Bihar
(AIR 1971 SC 1409)

The Hon'ble Supreme Court in this matter held that *"pension is not a bounty payable on the sweet will and pleasure of the Government and that on the other hand, the right to pension is a valuable right vesting with a Government servant"*

- (ii) Dharamvir Singh Vs. Union of India and Ors.
[(2013) 7 SCC 316]

The Hon'ble Supreme Court in this matter held that *"A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service."*

- (iii) Nakhat Bharti Vs. Union of India and Ors.
(TA 48/2009 in WP (C) 6324/2007)

In this case this Tribunal held that the Medical Authorities have to state the reason that the disease was present at the time of enrolment and if no such reason is mentioned, it has to be presumed that the disease has arisen during military service.

- (iv) Union of India and Ors. Vs. Ram Avtar
(Civil Appeal 418/2012 decided on
10th December, 2012)

The Hon'ble Supreme in this case held that *"an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension."*

7. The respondents have filed the counter affidavit and it is their submission that in the background of older age risk factor for

hearing loss and diabetes, the applicant was placed in low medical category A4G4 (Temp) at the age of 55 years and thereafter was periodically reviewed for all his disabilities. In the year 2007 he was placed in low medical category A4G3 (Permanent) and was thus discharged from service on 31st May, 2008. The composite assessment of both the disabilities was assessed @30% but held to be NANA. The respondents have further contended that since the applicant does not meet any of the conditions stipulated in Regulation 153 of Pension Regulations for the Air Force 1961 (Part I), he is not entitled to any relief prayed for and therefore, the OA may be dismissed.

8. Having heard learned counsel on either side and after taking into consideration the submissions made, we do find merit in the case to arrive at the conclusion that the applicant is entitled to the reliefs claimed.

9. The applicant has suffered two disabilities viz. conductive hearing loss and Diabetes Mellitus Type-II assessed @ 11-14% and @ 20% respectively, both held to be NANA. The issue pertaining to grant of disability pension for Diabetes Mellitus Type-II as well as the question of disabilities of permanent nature to be deemed to have been assessed for life has been settled by the Hon'ble Supreme Court in the case of **Commander Rakesh Pande Vs. Union of India and Ors.** [Civil. Appeal No.(s) 5970/2019], decided

on 28th November, 2019. We may also note that the Hon'ble Supreme Court in the case of Union of India and Anr Vs. Rajbir Singh (Civil Appeal No. 2904/2011) decided on 13th February, 2015 reinforced the principle that there always exists a presumption that disabilities are service related if they manifest during service and reasons for rebutting the presumption are not specifically recorded by the Medical Boards which in the case before is totally missing. We are also not hesitant to say that the disability Diabetes Mellitus Type II of the applicant bore a causal connection with the service conditions of the applicant. The applicant is thus entitled to grant of disability element of pension in respect of his disability Diabetes Mellitus Type II assessed @ 20%.

10. So far as grant of any benefit in respect of disability of conductive hearing loss assessed @ 11-14% is concerned, the Hon'ble Supreme Court in its judgment in Union of India and Ors. Vs. Wing Commander S.P. Rathore [Civil Appeal 10870/2018] decided on 11th December, 2019, has held that the disability element is not admissible if the disability is less than 20%. Relevant paras of the said judgment read as under:

"1. The short question involved in this appeal filed by the Union of India is whether disability pension is at all payable in case of an Air Force Officer who superannuated from service in the natural course and whose disability is less than 20%.

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XXX

9. As pointed out above, both Regulation 37(a)

and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off.”

11. Accordingly, we allow this OA and direct the respondents to grant disability element of pension to the applicant @ 20% for life which be rounded off to 50% for life from the date of applicant's retirement in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of. **Ram Avtar** (supra).

12. The respondents are directed to calculate; sanction and issue necessary PPO to the applicant within four months from the date of receipt of a copy of this order, failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment. The arrears are however restricted to three years prior to the date of filing of this OA in view of the judgment of the Hon'ble Supreme Court in the case of **Tarsem Singh** (supra).

13. No order as to costs.

Pronounced in open Court on this 2nd day of February, 2026.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[RASIKA CHAUBE]
MEMBER (A)

/vks/