

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

(Through Video Conferencing)

O.A.No.47 of 2020
with
M.A. No 44 of 2020

Tuesday, the 21st day of September 2021

27.

CORAM

HON'BLE MR JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)

Ex Sgt S Thiru Kumar, aged 43 years
S.No.724217-G
s/o Late K Sree Ramulu
No.9, 24th Street, 1st Main Road
Vetri Nagar,JB Estate, Avadi
Chennai 600 054

... Applicant

By Legal Practitioner: M/s M K Sikdar & AQ Choudhury

-vs-

1. Union of India
Rep. by the Secretary,
Govt of India, Ministry of Defence,
New Delhi-110 011

2. The Chief of the Air Staff
Air Headquarters Vayu Bhavan
New Delhi 110 106

3. The Directorate of Air Veterans
Air Headquarters, Subroto Park
New Delhi 110 010

3. The JCDA (Air Force)
Subroto Park, New Delhi 110 010

... Respondents

By : Shri V Balasubramanian, SPC

ORDER

1. M.A. No. 44 of 2020 is hereby Admitted. Keeping in view the averments made in the Miscellaneous Application and finding that the claim for Pension being a recurring cause of action as laid down by Hon'ble Apex Court in UOI & Ors Vs. Tarsem Singh, reported in (2008) 8 SCC 648, MA is allowed condoning the delay in filing the OA.

2. The Applicant filed this OA challenging the impugned order No. Air HQ/99798/1/724217/12/18/DAV(DP)/RMB dated 04.09.2018 passed by the 3rd Respondent rejecting the claim of Disability Element of Pension and to direct the Respondents to grant Disability Element of Disability Pension @ 40% w.e.f. 01.01.2019 for life with Broadbanding benefits from 40% to 50%.

3. The Learned Counsel for the Applicant submits that the Applicant was enrolled in the Indian Air Force on 12.12.1995 and discharged from service on 31.12.2018 in Low Medical Category (A4 G3) after rendering 23 years and 20 days of qualifying service. The Applicant submits that he suffered from Hypothroidism (Post Thyroictectomy) in November 2005 and Ventricular Premature Beats (Old) in March 2010. The Release Medical Board held on 01.03.2018 assessed the Disabilities, "Hypothroidism (Post Thyroictectomy) Z 09.0" @ 20% for life and "Ventricular Premature Beats" (Old) Z-09.0 @ 20% for life and Composite 40% for life and the net assessment qualifying for Disability Pension as Nil, but erroneously opined that the disabilities were neither

attributable to nor aggravated by Air Force Service. The Applicant was in receipt of Service Pension vide PPO No.349201814693, but the claim for Disability Element of Pension was denied by the 3rd Respondent vide letter No. Air HQ/99798/1/724217/12/18/DAV (DP/RMB) dated 04.09.2018. The Applicant filed the 1st Appeal on 22.5.2019 for grant of Disability Element of Disability Pension but the Respondents have not given any reply to the Appeal. The Applicant submits that, at the time of joining the Indian Air Force, he was not suffering from any ailment and had no history of any constitutional disease in his family and hence he has filed this application seeking the relief as prayed for.

4. The Learned Counsel for the Respondents admits that the Applicant was enrolled in the Indian Air Force on 12.12.1995 and was discharged from service on 31.12.2018 under the Clause "On fulfilling the conditions of his enrolment" after rendering a total of 23 years and 20 days of regular service. The Learned Counsel for the Respondents further submits that the Applicant underwent initial medical examination and declared fit on re-medical in Medical Category 'AYE' vide AFMSF-2A dated 23.7.1995 and was placed in Low Medical Category A4G4 for the ID, Solitary Nodule Thyroid (RT) OPTD vide AFMSF-15 dated 09.05.2006. During review in April 2010, the Applicant was also detected to have Ventricular Premature Beats vide AFMSF-15 dated 16.4.2010 and subsequently placed in Low Medical Category for the IDs Solitary Nodule Thyroid (RT) OPTD and Ventricular Premature Beats vide AFMSF-15 dated

12.3.2012. The Release Medical Board held on 01.03.2018 assessed his disabilities, "Hypothyroidism (Post Thyroidectomy) Z 09.0" @ 20% for life and "Ventricular Premature Beats" (Old) Z-09.0 @ 20% for life and Composite 40% for life and conceded that the IDs were neither attributable to nor aggravated by Air Force Service. The Respondents, on adjudication, upheld the recommendations of the said Release Medical Board and rejected the Applicant's claim for Disability Element of Disability Pension vide letter No.RO/3305/3/Med dated 29 June 2018. The same was communicated to the Applicant vide letter No. Air HQ/99798/1/724217/12/18/DAV (DP/RMB) dated 04.09.2018 with an advice to that he may prefer an Appeal within six months from the date of receipt of the said disposal. The Respondents submit that the Applicant's First Appeal seeking Disability Element of Disability Pension is under consideration by the Appellate Committee on First Appeal and presently the Appeal is for consideration of Dy. IFA (Air Hqrs) w.e.f. 10.2.2020 for opinion and decision shall be communicated to the Applicant. The Applicant is not entitled for Disability Pension and therefore the question of rounding off does not arise. Hence, the Respondents pray to Dismiss the OA as it is devoid of merit.

5. We have heard the arguments of the Learned Counsel for the Applicant as well as the Respondents and also carefully perused the material placed on record.

6. There is no dispute regarding the Applicant's date of entry into service, discharge and the length of service. It is seen that the Release Medical Board held on 01.03.2018 diagnosed the Applicant's diseases "Hypothyroidism (Post Thyroidectomy) Z 09.0" @ 20% for life and "Ventricular Premature Beats" (Old) Z-09.0 @ 20% for life and Composite 40% for life and conceded that the IDs were neither attributable to nor aggravated by Air Force Service. It is evident that the Applicant was not granted Disability Pension as his invaliding disease was declared as 'neither attributable to nor aggravated by Air Force service'.

7. Considering the fact that the Applicant was found to be medically fit at the time of enrolment, we find that the attributability of his disability is no more *res integra* in view of the Honourable Apex Court judgement in *Union of India Vs. Rajbir Singh* – Civil Appeal No.2904 of 2011 decided on 13.02.2015, where, after considering judgement of Dharamvir Singh and upholding the decision of the Tribunal granting Disability Pension to the claimants, the Honourable Court observed:

"6. xxx xxx xxx xxx xxx... The only question that arises in the above backdrop is whether the disability which each one of the respondents suffered was attributable to or aggravated by military service. The Medical Board has rejected the claim for disability pension only on the ground that the disability was not attributable to or aggravated by military service. **Whether or not the opinion is in itself sufficient to deny to the respondents the disability pension claimed by them is the only question falling for our determination.** Several decisions of this Court have in the past examined similar questions in almost similar fact situations."

"15.the essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on

medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground, his entitlement to claim disability pension will arise, unless of course, the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the members of the armed forces could not have been detected prior to service, the Medical Board must state the reasons for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with the service. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the Army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. **For the employer to say so, the least that is required is a statement of reasons supporting that view.** That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension.”

8. From the above judgement passed by the Hon’ble Supreme Court, we find that the Applicant’s disability has to be considered as attributable to Air Force Service thereby making him eligible for grant of **Disability Element of Pension** from the date of his Discharge, i.e. 1.1.2019.

9. Regarding the Applicant's entitlement for Broadbanding of Disability Element of his Disability Pension, from the ruling of the Hon'ble Supreme Court dated 10.12.2014 in Union of India Vs Ram Avtar, Civil Appeal No.418 of 2012 and connected cases, and the orders rendered by various Benches of the Armed Forces Tribunal in similar cases, we also find that the Applicant is entitled to benefits of rounding off of the Disability Element of Pension.

10. In-fine, the Respondents are directed to pay to the Applicant, Disability Pension with Disability Element of the Disability Pension @ 40% duly broadbanded to 50% from 1.1.2019 within three months, failing which, the arrears shall carry interest at 8% per annum till the date of actual payment. The OA is ordered accordingly.

11. No order on cost.

Sd/-

**LT GEN BOBBY CHERIAN MATHEWS
MEMBER (A)**

Sd/-

**RAJENDRA MENON
CHAIRPERSON**

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