ARMED FORCES TRIBUNAL
REGIONAL BENCH, KOLKATA

131.

O. A. No. – 57/2017

NO. JC-421790F Ex Sub Arun Kumar (Retd) ..... **Applicant.**

Versus

Union of India & Ors. ..... **Respondents**

For the Applicant : **Mr. Dipak Ranjan Mukherjee, Ld. Advocate**

For the Respondent : **Mr. Ajay Chaubey, Ld. Advocate**

CORAM :

HON'BLE MS JUSTICE ANJANA MISHRA, MEMBER (J)
HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)

O R D E R
02.05.22

1. The present O. A. has been filed by the Applicant against the illegal decision of rejection of Disability Pension to the Applicant by Senior Record Officer, for OIC Records, the Mechanised Infantry Records dated 20th September, 2014 (Annexure C) for rejection of the first appeal on 29th April, 2015 holding that Applicant's Disability 'PRIMARY HYPERTENSION' has been found Neither Attributable nor Aggravated by Military Service (NANA) and also rejection of Second Appeal on 29th February, 2016 rejecting the claim of the Applicant for Disability Pension.

2. The Applicant was born on 09th October, 1968 and joined the Mechanised Infantry Regiment on 06th January, 1989. The Applicant was mentally and physically fit at the time of enrolment in the Army. He continued in the Mechanised Infantry Regiment till 01st August, 2014. He served for 25 years, 06 months and 25 days. He was discharged from Service on 01st August, 2014 vide Discharge Memo. No. 13/2014 dated 27th January, 2014 (Annexure – A). The Applicant states that after two decades of service he was diagnosed with "HYPERTENSION" while he was posted at Ahmednagar. He was under treatment from 07.06.2012 to 07.06.2013 for the said disease at the Military Hospital, Ahmednagar. Medical Board Proceedings dated 27th February, 2014 recorded that the Applicant did not suffer from the said disease before joining the Armed Forces and in PART-III of the said document, it has

been recorded that the Applicant suffered the disease due to stress and strain in the Military Service only. Medical Board Proceedings dated 27th February, 2014 is at Annexure - B of the O. A. The opinion of the Medical Board was that the Disability of the Applicant was not Attributable to Service and not connected with service. The Applicant states that in the clinical assessment, it has been recorded that he was detected with HYPERTENSION in June, 2012; while in service. The "Confidential Report" in Column–2 had recorded that the disability of HYPERTENSION of the Applicant did not exist before the time of entry into service.

3. On the other hand, the Respondent Authorities have filed a Counter Affidavit on 03.12.2018 resisting and contesting of the case of the Applicant on the ground that the aforesaid disability is NANA to Military Service. The Petitioner's Prayer to sanction Disability Element of Pension @ 30 % for life from the date of discharge with the rounding off benefit to 50 % is not correct, baseless and against rules. The Applicant was examined by the Release Medical Board which found his ID PRIMARY HYPERTENSION as NANA. According to Respondents, as per Regulations 53 of Pension Regulations for the Army 2008, the Applicant is not eligible for Disability Pension.

4. We have heard Mr. Dipak Ranjan Mukherjee, Counsel for the Applicant and Mr. Ajay Chaubey, Counsel for the Respondents and perused the material placed on record. The main issue for consideration in this application is whether the Applicant is entitled to the benefits of Disability Element of Disability Pension duly rounded off with arrears thereof or otherwise.

5. In light of Hon'ble Supreme Court judgement in the Dharambir Singh Vs Uol & Ors reported in (2013) 7 SCC 316 decided on 02.07.2015, the matter stands squarely settled and it is not understood why this relief is being contested by the Respondents.

6. The issue relating to the grant of Disability and Broad Banding of Disability Pension is no longer *res integra* in view of the Order passed by the Hon'ble Supreme Court in case of Dharamvir Singh Vs Uol & Ors (Supra), Uol & Ors Vs. in Ram

Avatar decided on 10.12.2014 and UoI Vs. Rajbir Singh decided on 13.02.2015 wherein it is held that the Armed Forces Personnel with Disability Aggravated by or Attributable to Military Services are eligible for Broad Banding of Disability Pension / Disability Element of Pension.

7. On the issue of entitlement of arrears relating to old cases, the Hon'ble Supreme Court in the case of UoI Vs. Tarsem Singh reported in 2008 (8) SCC 648 decreed as under : -

> **"6. In this case, delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing the payment of arrears relating to 16 years, and that to with interest. It ought to have been restricted the relief relating to arrears to only three years before the date of Writ Petition or from the date of demand to date of Writ Petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances."**

8. Having regard to the above observations of Hon'ble Supreme Court and on perusal of the material placed on record, it is clear that the Applicant is entitled to Disability Element of Disability Pension and Broad Banding benefits from 1st August ,2014 to 50% (duly rounded off). The Applicant is also entitled to the arrears of Disability Element of Disability Pension restricted to three years prior to the date of filing this O. A. i.e., 26th April, 2017.

9. Before departing, we make it abundantly clear that if in the case of the final outcome of the case of UoI Vs. Ex-Sgt Girish Kumar, pending before the Hon'ble Apex Court is favourable to the Applicant it shall be implemented and arrears will be paid to the Applicant by the Respondents from the date made applicable on the Broad Banding of Disability Element of Disability Pension by the Hon'ble Apex Court.

10. Accordingly, this O. A. Is allowed. The Applicant shall be entitled to Disability Element of Disability Pension to 50 % along with arrears w.e.f. 26th April, 2014, duly Broad Banded. Let arrears of Disability Pension be paid to the Applicant within a period of four months from the date of receipt of this Order; failing which the Applicant shall be entitled to interest @ 8 % till the date of payment.

11. No order as to costs.

(LT GEN BOBBY CHERIAN MATHEWS)
MEMBER (A)

(JUSTICE ANJANA MISHRA)
MEMBER (J)