

SEE RULE 102 (1)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

APPLICATION : O.A. NO. : - 10/2017
WITH M.A. NO. 10/2017

DATED : THE SIXTH DAY OF FEBRUARY, 2020

CORAM

HON'BLE JUSTICE MR. MOHAMMAD TAHIR, MEMBER (JUDICIAL)

HON'BLE VICE ADMIRAL P. MURUGESAN, MEMBER (ADMINISTRATIVE)

APPLICANT (S) : No. 726820f Ex-SGT Debashish Dey

Versus

RESPONDENT (S) : The Union of India,

Counsel for the applicant (s) : Mr. Aniruddha Datta, Ld. Advocate

Counsel for the Respondent (s) : Mr. Indrajeet Dasgupta, Ld. Adv

ORDER

PER JUSTICE MR. MOHAMMAD TAHIR, MEMBER (JUDICIAL)

1. This application has been filed by the applicant Under Section 14 of the Armed Forces Tribunal Act, 2007 (in short The Act) praying granting the benefit of disability pension (comprising of service element and disability element) on this discharge / release / invalidation out of service, i.e., w.e.f. 01 February, 2008 with arrears of disability pension and interest @ 12 % per annum.
2. The fact of the case is that the applicant was enrolled in the Indian Air Force as an Airman (AC – U / T) in the trade of Clerk /PA on 20th January, 1998 and was subsequently attested on 21st January, 1989. The individual was suffering from "PIVD L 5 S 1 and was placed in LMC P 3, but was allowed to continue in service. The applicant was discharged from service

on 31st January, 2008 on fulfilling his terms and conditions of service with 20 years & 12 days of qualifying service.

3. The applicant was granted disability and was assessed to be 30 % for life which was held to be as NANA. The applicant's claim for the disability of pension has been rejected by the Air Force Record Office, Subroto Park, New Delhi – 110 010 vide their letter No. RO/2703/726820/01/08/P&W(DP/RMB) dated 07th June, 2007 (Annexure A-2).

4. The applicant submits that his prayer is now covered by a series of decisions of the Hon'ble Supreme Court, including Dharamvir Singh Vs Union of India (2013) 7 SCC 316 and other several judgements on the subject.

5. It is undisputedly proved that at the time the applicant entered into military service, this type of disease / disability did not exist. The disability accrued to him during the course of service in the Indian Air Force. By virtue of the principle laid down in Dharamvir Singh's case (supra), the said disability can be attributed / aggravated by military service.

6. Considering the law laid down by the Hon'ble Supreme Court and also the attending circumstances, the rejection of the claim of the applicant is set aside and the applicant is thus held entitled to disability pension from the date of discharge i.e., 01.02.2008 @ 50% as against 30% for life after being rounded off as per the Judgement of the Hon'ble Supreme Court in

Civil Appeal 418/2012 Union of India Vs Ram Avtar decided on 10.12.2014 subject to verification and the arrears are directed to be released by the Respondents within a period of three months from the date of receipt of a certified copy of this order by the counsel for the Respondents / OIC Legal Cell, failing which the arrears shall carry an interest @ 8 % from the date of this order. However, the arrears are restricted to three years prior to the date of filing this O.A. i.e., 12.01.2017. M.A No. 10/2017 stands dispose accordingly.

7. No order as to costs.

(P. MURUGESAN)
MEMBER (A)

(MOHAMMAD TAHIR)
MEMBER (J)