* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: May 21, 2024*

\+ W.P.(C) 7359/2024 & CM APPL. 30724/2024

(63) NARESH KUMAR ..... Petitioner
Through: Mr. Bijendra Kumar Pathak, Adv.

versus

UNION OF INDIA AND ORS ..... Respondents
Through: Ms. Radhika Bishwajit Dubey, CGSC for UOI

**CORAM:**
**HON'BLE MR. JUSTICE V. KAMESWAR RAO**
**HON'BLE MR. JUSTICE GIRISH KATHPALIA**

**V. KAMESWAR RAO, J. (ORAL)**

**CM APPL. 30724/2024 (for exemption)**

Exemption allowed subject to all just exceptions.

Application stands disposed of.

**W.P.(C) 7359/2024**

1. The challenge in this petition is to the orders dated August 04, 2023 (OA No. 1852/2019) and September 15, 2023 (RA 36/2023 in O.A. 1852/2019), passed by Armed Forces Tribunal, Principal Bench, New Delhi ('AFT', for short), whereby the AFT had partially allowed the O.A. filed by the petitioner herein by stating in paragraph 14, as under and dismissed the R.A.:

*"14. The OA 1852/2019 is thus, partially allowed and the Respondents are directed to grant the benefit of the disability element of pension @20% for life for PIVD L4-*

*L5 (optd) rounded off to 50% for life in view of judgment of Hon'ble Apex Court in Union of India versus Ram Avtar (supra) from the date of discharge i.e 31.03.2019. The arrears shall be disbursed to the applicant within three months of receipt of this order failing which it shall earn interest@ 6% p.a. till the actual date of payment."*

2. The facts as noted from the record and the submission of the learned counsel for the petitioner are, the petitioner was enrolled in the Indian Air Force on March 23, 1984. He was discharged from the Air Force service on March 31, 2019 under the clause "On transfer to pension establishment other than request" after rendering 35 years of regular service.

3. At the time of his discharge from service, a Release Medical Board ('RMB', for short) dated September 12, 2018 was held which found the petitioner fit to be discharged from service in composite *Low Medical Category-A4G4 (P)* for the disabilities of (i) Primary Hypertension @30% (ii) Morbid Obesity @Nil (iii) PIVD L4-L5 (optd) @20% and (iv) Pre Diabetes (IFG+IGT) @15-19% compositely assessed @50% for life. The RMB has considered the IDs (i), (ii) and (iv) as neither attributable to nor aggravated by Air Force service. Disability (iii) was assessed as aggravated by service. The net qualifying element for disability was recorded at 20% for life in relation to the disability of PIVD L4-L5 (optd).

4. The recommendations of the RMB were upheld by AOC AFRO, who accepted the disability pension claim for the disability of

PIVD L4-L5 vide letter dated February 06, 2019, and hence, the petitioner was allowed the disability element of pension for disability of PIVD L4-L5 @20% (20% rounded off to 50%) w.e.f. April 01, 2019 for life. Being aggrieved by the decision of the respondents with regard to remaining/other claims/disabilities, the petitioner approached the AFT by filing the aforesaid O.A.

5. According to the counsel for the petitioner, the claim of the petitioner was confined to the grant of the disability element of pension in relation to the disabilities of Primary Hypertension (Old) and PIVD L4-L5 (Optd) and the prayer made for grant of disability element of pension in relation to the disabilities of Pre-Diabetes (IFG+IGT) and Morbid Obesity was not pressed.

6. During the course of hearing before the Tribunal, the learned counsel for the petitioner submitted that he shall press the prayer for the grant of the disability element of pension for the disability of Pre-Diabetes (IFG+IGT) too.

7. According to the counsel, the petitioner had placed reliance on the judgment of the Supreme Court in the case of ***Dharamvir Singh v. UOI & Ors., 2013 (7) SCC 36***, to submit that, no note of any disability was recorded in the service documents of the petitioner at the time of the entry into the service. The petitioner served in the Air Force at various places in different environmental and service conditions in his prolonged service and any disability that arose during his service has to be deemed to be attributable to or aggravated by the service.

8. The reliance was also placed on the judgment of the Supreme Court in the case of ***Union of India vs. Ram Avtar, Civil Appeal No.***

***418/2012*** decided on December 10, 2014. Reliance was also placed on the decision of AFT, Regional Bench, Guwahati Bench in ***OA 31/2014*** titled **Ex Hav Jhunu Kumar Das v. UOI & Ors.** dated January 27, 2016, and of the AFT, Regional Bench, Lucknow titled as ***Lt. Col. Triveni Chandra Pandey v. UOI & Ors.***, wherein similarly situated persons were given relief.

9. On the other hand, the learned counsel for the respondents contested the petition by stating that the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on account of (a) disability which is attributable to or aggravated by Air Force service and (b) degree of disablement should be assessed at @ 20% or more. In other words, disability pension is granted to those who fulfill the aforesaid criteria.

10. According to her, it was the case of the respondents that the RMB has assessed petitioner's three disabilities viz. (i) Primary Hypertension, (ii) Morbid Obesity and (iii) Pre Diabetes (IFG+IGT) as neither attributable to nor aggravated by service and as such the petitioner is not entitled to disability pension for the disabilities of Primary Hypertension, Morbid Obesity and Pre-Diabetes.

11. It was the case of the respondents that the ideal body weight was 75.5 Kgs. and the petitioner was overweight by 60% at the RMB and it was also highlighted that the disabilities of Primary Hypertension and Pre Diabetes were due to the Morbid Obesity of the petitioner. In support of the same, the respondents relied on the orders passed by the AFT, Principal Bench, New Delhi in the case of ***Ex (HFO) Gyanendra***

***Singh***, in OA 1656/2016, decided on February 20, 2019, wherein the claim of disability pension for Primary Hypertension and IGT was disallowed because the petitioner therein was found to be overweight. She seeks the dismissal of the writ petition.

12. At the outset, we may state the Tribunal was of the view that, insofar as PIVD L4-L5 (optd) is concerned, the disability is assessed at 20%. It also considered, the same was aggravated due to military service fulfilling the twin criteria as per Rule 153 Pension Regulation for IAF, 1961 (Part-1) and as such the disability pension is admissible. In so far as the disability of Pre-Diabetes (IFG+IGT) is concerned, it is assessed at 15-19%, it does not fulfill the twin criteria as per Rule 153 Pension Regulation for IAF, 1961, i.e., disability must be attributable and aggravated by service (ii) degree displacement should be assessed at 20% or more.

13. Insofar as the primary hypertension is concerned, the Tribunal was of the view that, on a perusal of the weight chart of the petitioner from January, 2012 to February, 2015 along with his Body Mass Index ('BMI', for short), reveals that the petitioner has been overweight and his BMI is well above the normal limit of 25. The petitioner was overweight by 60% even at the time of his RMB. Accordingly, the Tribunal had partially allowed the petition by stating in paragraphs 13 and 14 as under:-

> *"13. In view of the aforesaid contentions and the parameters referred to above, and the fact that the applicant was overweight prior to the onset of the hypertension and the con-elation of Primary*

*Hypertension and overweight, we are of the view that weight of the applicant is a contributory factor toward the onset of the primary hypertension and the applicant is not entitled to the grant of disability element of pension for the disability of Primary Hypertension.*

*14. The OA 1852/2019 is thus, partially allowed and the Respondents are directed to grant the benefit of the disability element of pension @20% for life for PIVD L4-L5 (optd) rounded off to 50% for life in view of judgment of Hon'ble Apex Court in Union of India versus Ram Avtar (supra) from the date of discharge i.e 31.03.2019. The arrears shall be disbursed to the applicant within three months of receipt of this order failing which it shall earn interest@ 6% p.a. till the actual date of payment."*

14. We note, the case of the petitioner before the AFT was that the onset Hypertension (Old), Morbid Obesity, PIVD L4-L5 (Optd) and Pre-Diabetes, was because he being the senior most PBOR, the entire responsibility of running affairs at different bases/units pertaining to his trade of security was vested upon the petitioner.

15. It was his case, it is very unbelievable that primary Hypertension and Pre-Diabetes could develop just during that peace tenure and that the disability is not connected with Air Force Service. It was stated, it needs no emphasis that human body is not an electrical switch for switching on and off. The human body takes time to manifest its disabilities/ disease particularly the one like Primary

Hypertension and Pre-Diabetes. Due to stress and strain throughout his service that he developed those complications.

16. The counsel states before us that this Court may call for the earlier record of the year 2002 to ascertain that the petitioner had developed the aforesaid ailments, while in service and as such it is clear that the same is attributable to the Air Force Service/military service..

17. We are not impressed by the submissions made by the learned counsel for the petitioner for the simple reason whether the disability is attributable to Air Force Service or not is an issue of fact and the same can be ascertained by the RMB. The RMB has held that the aforesaid are not attributable to the Air Force Service. There is a reason for the RMB to say so i.e., because of obesity, which was set in, when he was posted in the peace station, led to Hypertension/the Pre-Diabetes. The RMB also stated that the obesity is due to dietary indiscipline and lack of exercise.

18. It is also the plea of the learned counsel for the petitioner that the petitioner had backache which was attributable to the Air Force Service which lead to obesity resultantly development of hypertension and pre-diabetes. We are unable to accept this plea of the learned counsel for the petitioner because of the remoteness or impossibility of back pain leading to obesity/hypertension/pre-diabetes. Surely, the obesity which lead to hypertension and pre-diabetes being not attributable to the Air Force Service, the disability component of pension was rightly rejected.

19. In view of our above discussion, we are of the view that the Tribunal is justified in coming to the conclusion in the manner it has

come in the impugned order. Hence, the petition being without merit, the same is dismissed. No cost.

**V. KAMESWAR RAO, J**

**GIRISH KATHPALIA, J**

**MAY 21, 2024/***ds*