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

111.

OA 1737/2019

Ex PO EL (R) Rahul Kumar Tyagi ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

O R D E R
29.02.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, the applicant has filed this application seeking

(a) Quash the impugned Letter No.PEN/600/D/LRDO I:01/2019/138960W dated 21.02.2019;

(b) Direct the respondents to grant disability element of pension to the applicant duly rounded off to 50% with effect from his date of discharge;

(c) Direct the respondents to pay the due arrears of disability element of pension with interest @ 12% per annum from the date of retirement with all the consequential benefits; and

(d) Grant any other relief which this Tribunal may

deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.

2. The applicant had joined the Indian Navy on 28.01.2004 and he was discharged from service on 31.01.2019. Before his discharge, the applicant was brought before a duly constituted Release Medical Board which assessed the disabilities - (i) Solitary Seizure ICD No. G40 @20% and (ii) Horse Shoe Kidney ICD No. Q92.0 @ 15-19% as neither attributable to nor aggravated by Naval service and his composite disablement was assessed @ 40%. At the time of final arguments, the learned counsel for the applicant submitted that the applicant is not pressing for disability "Horse Shoe Kidney".

3. It was submitted on behalf of the applicant that he was enrolled in the Indian Navy in a fit medical category both physically and mentally and that there was no adverse medical opinion recorded at the time of induction into service. The learned counsel for the applicant further submits that he also underwent training before being deputed and that in terms of the judgment of the Hon'ble Supreme Court in *Dharamvir Singh v. Union of India and others* (2013) 7 SCC 36), he is entitled to the benefit of grant of disability

element of pension and in terms of the decision in *Union of India and others v. Ram Avtar* (Civil Appeal No. 418/2012), he is entitled to the benefit of rounding off his disability element of pension from 20% to 50%. The learned counsel for the applicant further submits that there is nothing on record to show that the applicant was suffering from the disease at the time of his entry into service and that it has to be presumed that he was in sound health condition at the time of entry into service and the deterioration in his health has to be held to be attributable to the stress and strain of Naval service. In support of his contentions, the learned counsel for the applicant placed reliance on the decisions in *Dharamvir Singh* (supra), *Union of India and others v. Rajbir Singh* (Civil Appeal No. 2904/2011), Ajit Singh (CA 14478/2011) and *Rakesh Kumar Singla* (CA 5414/2011).

4. On the other hand, the learned counsel for the respondents submitted that in the instant case, there is no documentary evidence of any service-related stressors, leading to the onset of the disability and that the onset of the ID was in a peace station. The learned counsel for the respondents further submits that there are no aggravating or attributable factors brought forth in the instant case, which fulfil the criteria in terms of Para 33, Chapter VI of the GMO

2002, amended 2008 and the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008. The learned counsel for the respondents reiterated that the onset of the disease in the instant case was in a peace station. The learned counsel further submitted that as per the existing policy, personnel enrolled in the Indian Navy have to undergo a primary medical examination at the time of enrolment which is carried out by the Recruiting Medical Officer and the respective Recruiting Centres and that internal disorders cannot be detected by the medical officer conducting recruiting medical examination at the time of enrolment in the absence of history or overt manifestation of symptoms. The learned counsel for the respondents placed reliance on the decision of the Hon'ble Supreme Court in *Ex Cfn Narsingh Yadav v. Union of India and others* (Civil Appeal No. 7672/2019) to contend that diseases which are undetectable by carrying out physical examination on enrolment unless adequate history is given at the time of enrolment by the member cannot be held to be attributable to the Naval service. He then drew our attention to the observations made by the Hon'ble Supreme Court in Paragraphs 20 and 21, which read as under:

> *20) In the present case, clause 14(d), as amended in the year 1996 and reproduced above, would be applicable as entitlement to*

disability pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the provision of grant of disability pension is a beneficial provision but, mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that Schizophrenia is presumed to be attributed to or aggravated by military service.

21) Though, the opinion of the Medical Board is subject to judicial review but the Courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. The invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the Report of the invaliding Medical Board.

While concluding his arguments, the learned counsel for the respondents has prayed that the OA be dismissed.

5. On a consideration of the submissions made on behalf of either side, it has to be observed that as laid down by the Hon'ble Supreme Court in *Ex Cfn Narsingh Yadav (supra)* vide observations in Para 18 thereof, each case has to be examined whether the duties assigned to the individual may have led to stress and strain leading to the disability.

6. The applicant in the case of *Ex Cfn Narsingh Yadav (supra)* was enrolled in the Indian Army on 02.12.2003 and was discharged from service on 08.05.2007, when the invaliding board had found him to be suffering from Schizophrenia which disability had been assessed to be

@20% for a period of 5 years and it had been observed vide Para-19 of the Hon'ble Supreme Court to the effect:

> *The appellant was a young boy of 18 years at the time of enrolment and had been boarded within 3½ years of his service. Even if he was suffering from any mental disorder prior to enrolment, the same could not be detected as there were intervals of normality. The appellant was posted in peace station as a Vehicle Mechanic. Neither the nature of job nor the place of posting was such which could have caused stress and strain leading to disability as attributed to or aggravated by military service.*

The facts of the instant case, however, are not in *pari materia* with the facts of the case of *Ex Cfn Narsingh Yadav (supra)*. This is so inasmuch as the applicant herein was discharged from service in a low medical Category after 15 years, 09 months and 03 days of service.

7. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down by the Hon'ble Supreme Court in *Dharamvir Singh (supra)*, an individual of the Armed Forces has to be presumed to have been inducted into military service in a fit condition, if there is no note of record at the time of entrance in relation to any disability and in the event of his subsequently being discharged from service on medical grounds, the disability has to be presumed to be due to service unless contrary is established, is no more *res integra*.

8. It is essential to observe that the facts of the instant case are *pari materia* to the facts in the case of *Ex L COM (TEL) Satish Kumar v. Union of India and others* (OA 2341/2019 decided on 12.09.2023) wherein it was observed as under:

> *16. Furthermore, the 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which take effect from 01.01.2008 provide vide Paras 6, 7, 10, 11 to the effect:*
>
> *"6. Causal connection:*
>
> *For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.*
>
> *7. Onus of proof.*
>
> *Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/ invalidment/release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.*
>
> *10. Attributability:*
>
> *(a) Injuries:*
>
> *In respect of accidents or injuries, the following rules shall be observed:*
>
> *(i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).*
>
> *(ii) In cases of self-inflicted injuries while *on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.*
>
> *(b) Disease:*
>
> *(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-*
>
> *(a) that the disease has arisen during the period of military service, and*
>
> *(b) that the disease has been caused by the conditions of employment in military service.*
>
> *(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of*

attributability and where the disease may have been contacted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course as determined by the competent medical authority.

(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability 'should be conceded on the basis of the clinical picture and current scientific medical application.

(iv) When the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.

11. Aggravation:

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High. Altitudes etc." ***(Emphasis supplied).***

Thus, the ratio of the verdicts in Dharamvir Singh Vs. Union Of India & Ors (Civil Appeal No. 4949/2013); (2013 7 SCC 316, Sukhvinder Singh Vs. Union Of India & Ors, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, UOI & Ors. Vs. Rajbir Singh (2015) 12 SCC 264 and UOI & Ors. Vs. Manjeet Singh dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

In view of the aforesaid analysis, we find that with nothing thus on record to indicate that the applicant suffered from any disease prior to his enrolment, it has to be held that the disability of the applicant i.e. "solitary seizure" in the instant case was caused due to the stress and strain of Naval service.

9 . The OA is thus allowed. The applicant is held entitled to the grant of disability pension for life qua the disability of "solitary seizure" @ 20% for life, which in terms of the decision in *Ramavtar* (supra) is rounded off to 50% for life, from the

date of discharge. The respondents are directed to calculate, sanction and issue necessary PPO to the applicant within a period of three months from the date of receipt of a copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled to interest @ 6% p.a. from the date of receipt of copy of the order by the respondents.

10. No order as to costs.

11. Pending application(s), if any, are disposed of.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

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