COURT NO. 3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 409/2016

Hav Jagdish Rai (Retd.) **... Applicant**

Versus

Union of India & Others **.... Respondents**

For Applicant : Ms. Archana Ramesh, Advocate

For Respondents : Mr. Shyam Narayan, Advocate for R-1 to 3 and
Ms. Anjali Vohra, Advocate for R-4

CORAM:

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

O R D E R

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 are read as under:

"A. Issue directions to grant Disability Pension for the Disability of Renal Calculus as

quantified in the Release Medical Board (copy not with the applicant) in the light of the Judgment of the Hon'ble Supreme Court in Re Dharamvir Singh Versus Union of India dated 02 July 2013 placed as <u>Annexure A-7.</u>

B. Issue directions to grant consequential AGIF benefits to the applicant in the light of the judgment of the Hon'ble Armed Forces Tribunal, Regional Bench Kolkata in OA No. 100/2012 in Re Ex Naik Nabaghana Behera Versus Union of India dated 25 Sep 2013 placed as <u>Annexure A-8</u> as also the judgment of the Hon'ble Punjab and Haryana High Court in Re Paramjit Singh Versus Union of India dated 12 Feb 2008 which has been upheld by the Hon'ble Supreme Court vide Order dated 04 April 2011 placed herein as <u>Annexure A-9</u> (Colly),

C. Issue directions to grant LPG Agency to the applicant based on his disability rules of which are placed as <u>Annexure A-10.</u>

D. Pass such other and further orders/directions to the respondents to grant adequate compensation in the attendant genuine circumstances of the case, to meet the ends of justice."

BRIEF FACTS

2. The applicant was enrolled in the Army on 05.03.1975 and was discharged from the service on 31.05.1998 (AN) under Army Rule 13(3) III (v) read in conjunction with Army rule 13(2)A before fulfilling the conditions of enrolment in low medical category BEE (Permanent) due to disability "Renal Calculus (Old) OPTD". The applicant was downgraded to low medical category BEE (Permanent) w.e.f 05.12.1996 The Release Medical Board dated 17.02.1998, found the applicant fit to be released in low medical category BEE (Permanent) for the disability of "Renal Calculus (Old) OPTD" assessed at @20% for two years and further opined that the disability was neither attributable to nor aggravated and not connected with military service.

3. The claim for disability pension in respect of the applicant was submitted to PCDA(P) for grant of disability pension vide Records the Rajput Regiment letter No. 2971543/13//DP/PG dated 27.07.1998 but the same was

rejected vide PCDA(P) letter No. G3/63/164/8/98 dated 24.11.1998 for the reason that the said disability is :-

(a) Neither attributable to nor aggravated by military service.;

(b) Constitutional in nature and not related to military service.

4. The applicant was intimated vide letter dated 07.12.1998 that his disability pension claim has been rejected with advice to prefer an appeal against the decision on the grounds as he deems fit to put forth. However, no appeal was filed by the applicant within the stipulated period instead the present OA is filed after a period of 18 years. However, in the interest of justice, the same is taken up for consideration.

CONTENTIONS OF THE PARTIES

5. Learned counsel for the applicant has restricted his prayer to the grant of disability element of pension in relation to the disability of "Renal Calculus (Old) OPTD" only and does not want to press the prayers 'b', 'c' and 'd'.

6. Learned counsel for the applicant submitted that he was downgraded to low medical category for the disability of "Renal Calculus (Old) OPTD" after serving for a long period of 23 years, which makes it clear that it was not pre-existing and was due to service as at the time of entry into service, the applicant was subjected to through medical examination conducted by a Board of Doctors and when found medically fit at the Selection Centre in all respect he was enrolled into the Indian Army.

7. The applicant was downgraded to low medical category BEE (Permanent) w.e.f. 05.12.1996 and had completed his prescribed colour of 22 years on 31.03.1997 (AN). The applicant was not eligible for grant of 2 years of extension under the provision of IHQ of MoD (Army) letter No. B/33098/AG/PS 2(c) dated 04/25 May, 1995. Accordingly, Records The Rajput Regiment vide letter No. 2118/02/RA dated 06.06.1998 issued retirement order to 23 RAJPUT for discharge of the applicant by Release Medical Board and the

applicant was not granted extension of his service due to his low medical category.

8. Referring to Rules 5 and 14(b) the Entitlement Rules, 1982, it is urged that in case of discharge from service in low medical category, there is a codified presumption that any deterioration in health or disability contracted is due to service condition. Further, referring to Rules 18 and 19 of the Entitlement Rules, it is argued that 'inherent constitutional tendency' is not a disease in itself as is routinely declared by the Medical Boards and if the worsening of a condition persists till the time of discharge, meaning thereby that if the medical category of an individual remains at a worsened stage at time of discharge (i.e., a person remains in low medical category at time of exit from service) then aggravation is to be accepted. Referring to Rule 20(a) it is pointed out that in case nothing is known of the disease then presumption of entitlement should go to applicant, however disabilities are still routinely declared as NANA with reasons such as "idiopathic" or "cause unknown".

9. The learned counsel for the applicant has further placed reliance on the judgments of the Hon'ble Supreme Court in ***Dharamvir Singh*** Vs. ***Union of India and Ors.*** ***[(2013) 7 SCC 316],*** and the decision in OA 100/2012 in ***Ex Naik Nabaghana Behera vs. UOI & Ors.*** by the Hon'ble Armed Forces Tribunal, Regional Bench, Kolkata, to contend to the effect that in absence of any cogent reasons recorded by the Medical Board for the cause of the disability that has arisen during the course of service of the applicant, the same has to be presumed to have arisen in the course of military service.

10. *Per contra,* learned counsel for the respondents, through the counter affidavit filed, submitted that as per Release Medical Board, the applicant was released in low medical category BEE (Permanent) for the disability "Renal Calculus (Old) OPTD" and the Medical Authorities also opined that the disability was neither attributable to nor aggravated by military service (NANA) and not connected with military service.

11. The respondents further submitted that while rejecting the claim for disability pension vide PCDA(P) letter dated 27.07.1998, the competent authority has given detailed reasons for rejecting the claim of disability pension. He, therefore, prayed that the OA may be dismissed.

ANAYLSIS

12. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the extent of disability assessed by the Medical Board Proceedings dated 17.02.1998, @20% for two years and considered it to be neither attributable to nor aggravated by service.

13. In so far as the attributability or aggravation is concerned, which was considered to be NANA by the Medical Board, it is pertinent to mention that in the instant case, the onset of the said disability **"Renal Calculus (Old) OPTD"** was in 12.10.1995 at 28 Karnataka BN. NCC Hubli. It is pertinent to mention that the Guide to Medical Officer (Military Pension), 1982 have no provision for the said disability. The

GMO 1982 is silent about the attributability/aggravation for "Renal Calculus (Old) OPTD". In the instant case, the disability is constitutional in nature and is not related to service.

14. In similar matter, the decision in OA 1005/2019 in ***Ex Hav Parte Pradip Vasantrao*** **Vs.** ***Union of India & Ors.,*** by the Armed Forces Tribunal, Principal Bench, New Delhi, the applicant was also suffering from "Left Renal Mass Benign" that was dismissed vide order dated 11.11.2025.

15. Learned counsel for the applicant has relied upon ***Commander Rakesh Pande vs. UOI & Ors.*** to assert that the assessment made by the Medical Board shall be treated for life except in the case of disability which is not of a permanent nature unless the individual request for a review. He has further relied upon on the case of ***Smt Sulekha Rani vs. UOI & Ors.*** Civil Appeal No. 1280/2019, however, the same is not applicable to the facts of the case as the aforesaid case relate to the grant of family pension and not a disability pension.

16. Learned counsel for the applicant relied upon the judgments of the Armed Forces Tribunal Principal Bench, New Delhi in ***Gunner Radhakrishnan vs. UOI & Ors.*** in OA 433/2012 and in the decision in OA 721/2017 ***Ex Gnr Vasant Mokashi vs. UOI & Ors.*** It was submitted that in those cases the applicants were suffering from neurosis, a disease relating to mental elements, which is not applicable to the facts of the present case.

17. The guidelines set out in Chapter-II of the Guide to Medical Officers (Military Pensions), 1980 which set out the "Entitlement: General Principles", and the approach to be adopted in such cases. Para 7, 8 and 9 of the said guidelines reads as under :-

> ***"7. Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at***

the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member, e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorisation of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.

The following are some of the diseases which ordinarily escape detection on enrolment:-

(a) Certain congenital abnormalities which are latent and only discoverable on full investigations, e.g. Congenital Defect of Spine.

(b) Certain familial and hereditary diseases e.g. Haemophilia, Congential Syphilis.

(c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis.

(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders etc

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.

8. The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect.

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or

otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.

9. On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge restored the member to his normal condition so that his discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realised on enrolment in the army. To sum up, in each case the question whether any persisting deterioration is or of not due to

service will have to be determined on the available evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."

18. As per the available scientific literature published by National Library of Medicine (National Center for Biotechnology Information) NLM, the cause of "Renal Calculus (Old)" is :-

"Renal calculi (Kidney stones) are not permanent in nature in that they can be treated, removed, or passed from the body. However, the underlying condition of forming stones (urolithiasis or nephrolithiasis) is often a recurrent and lifelong disease.

Renal calculi are a common cause of blood in the urine and pain in the abdomen, flank, or groin. They occur in 1 of every 11 people in the United States at some time in their lifetimes, with men affected 2 to 1 over women. Development of the stones is related to decreased urine volume or increased excretion of stone-forming components such as calcium, oxalate, uric acid, cystine, xanthine, and phosphate.

Calculi may also be caused by low urinary citrate levels (an inhibitor of stone formation) or excessive urinary acidity. Renal calculi may present with excruciating pain, and most patients present to the emergency department in agony. A single event does not cause kidney failure, but recurrent renal calculi can damage the tubular epithelial cells, leading to functional loss of the renal parenchyma.

<u>Etiology: Major Risk Factors for Renal Calculus</u>

Urolithiasis occurs when solutes crystallize out of urine to form stones. Urolithiasis may occur due to anatomic features leading to urinary stasis, low urine volume, dietary factors (eg, high oxalate or high sodium), urinary tract infections, systemic acidosis, medications, or, rarely, inheritable genetic factors such as cystinuria.

Most patients with nephrolithiasis (75%-85%) form calcium stones, most composed primarily of calcium oxalate (monohydrate or dihydrate) or calcium phosphate. The other main types include uric acid (8%-10%), struvite (calcium magnesium ammonium phosphate, 7%-8%), and cystine stones (1%-2%).

The most common causes of urinary stone disease are inadequate hydration and low urine volume. The 4 most common chemical factors contributing to urinary stone formation are hypercalciuria, hyperoxaluria, hyperuricosuria, and hypocitraturia.

The major types and causes of renal calculi include:

- ***Calcium stones: due to hyperparathyroidism, renal calcium leak, absorptive or idiopathic hypercalciuria, hyperoxaluria, hypomagnesemia, and hypocitraturia***
- ***Uric acid stones: associated with a pH of less than 5.5, a high intake of purine-rich foods (fish, legumes, meat), or cancer; may also be associated with gout***
- ***Struvite stones: caused by Gram-negative, urease-producing organisms that break down urea into ammonia***
- ***Cystine stones: due to an intrinsic metabolic defect causing the failure of the renal tubules to reabsorb cystine, lysine, ornithine, and arginine; visually opaque and amber."***

In the present case, the disability "Renal Calculus (Old) OPTD" was such that could not have been detected during the commencement of service. He was promptly treated and no lasting damage was inflicted by the service. **Kidney stone is a treatable condition but the underlying predisposition to form them can be lifelong requiring a regular management**. As per the medical literature available on the subject, genetics also play a major role in formation of renal calculus.

19. In view of the aforestated, we do find no reason to differ from the reasoning provided in Part III, Opinion of the Release Medical Board not solely on medical ground dated 17.02.1998 in Part III, in answer to questioner at serial No. 2(d) has opined that disability is not connected with military service. Further at Serial No. 4, Renal Calculus (LT) OPTD was assessed @20% for two years only and hence, it is safe to say that there is absence of any causal connection between disability and the military service. Hence, we do not find any error in the medical Board proceedings which considered the

said disability as neither attributable to nor aggravated by service.

CONCLUSION

20. We, thus, hold that the disability "Renal Calculus (Old) OPTD" has no causal connection with the military duty and therefore, there is no merit in the case, the OA 409/2016 is thus dismissed.

Pronounced in the open Court on this 20th day of January, 2026.

[MS. RASIKA CHAUBE]
MEMBER (A)

[JUSTICE NANDITA DUBEY]
MEMBER (J)

/Yogita/