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

O.

OA 1069/2019 WITH MA 1738/2019

Flt Lt Surender Singh Dabas (Retd.) ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. Baljeet Singh, Advocate
For Respondents : Mr. Harish V Shankar, Advocate

CORAM :

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

ORDER
26.09.2023

Vide our orders of even date, we have dismissed the OA. Faced with the situation, learned counsel for the applicant makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007, to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[RAJENDRA MENON]
CHAIRPERSON

[P.M. HARIZ]
MEMBER (A)

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

OA 1069/2019 with MA 1738/2019 & MA 2903/2022

In the matter of :

Flt Lt Surender Singh Dabas (Retd.) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Baljeet Singh, Advocate

For Respondents : Shri Harish V. Shankar, Advocate

CORAM:

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

O R D E R

M.A. No. 2903 of 2022 :

Vide this application, the respondents seek condonation of delay in filing the counter affidavit. In view of the averments made, delay is condoned. Counter affidavit is taken on record. MA stands disposed of.

M.A. No. 1738 of 2019 :

Vide this application, the applicant seeks condonation of 6570 days' delay in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of ***Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]*** and in ***Union of India & Ors. Vs. Tarsem Singh***

[2009 (1) AISLJ 371], delay in filing the OA is condoned. MA stands disposed of.

O.A. No. 1069 of 2019 :

The present application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, who is aggrieved by the impugned order dated 12.06.2019 vide which the first appeal preferred by the applicant was rejected and disability pension denied for the disabilities suffered by him along with rounding- off benefit to 50% along with arrears and interest.

2. Briefly, the facts of the case are that the applicant was commissioned in Indian Air Force on 07.06.1986 and was invalided out from service on 08.07.1998 being in low medical category A4G2(P). The Invaliding Medical Board (IMB) assessed the disabilities of the applicant i.e.(1) EPISODIC UNCONCIOUSNESS (OLD) @ 15-19% and (2) OBESITY @ 15-19% with probable duration of disablement as 'Permanent', compositely assessed @ 15-19%. Both the disabilities were opined by the IMB as 'neither attributable to nor aggravated by the military service', based on which, the disability pension has been denied to the applicant.

Aggrieved by this, the applicant preferred the first appeal dated 10.06.2019 for grant of disability pension, which was rejected by the respondents vide letter dated 12.06.2019 (Annexure A-1).

3. Learned counsel for the applicant pleaded that at the time of joining, the applicant was found mentally and physically fit for joining the Indian Air Force and there is no note made stating that he was suffering from any disease at that time. Therefore, as the disability arose during the service, same should be held as attributable to military service. Learned counsel explained about the strenuous working conditions and challenging circumstances during the service, odd working hours, one after the other postings to flying squadrons causing stress and strain in service, which aggravated the disease of the applicant. In support of his contentions, learned counsel relied upon the judgements of Hon'ble Supreme Court including ***Dharamvir Singh Vs. Union of India [(2013) 7 SCC 316]***, ***Union of India & Ors. Vs. Rajbir Singh, (2015)12 SCC 264*** and also ***Sukhvinder Singh Vs. Union of India & Ors. [2014 STPL (Web) 468 SC]*** and judgment of the

Punjab and Haryana High Court in ***Ex Naik Umed Singh Vs. Union of India*** ***[C.W.P. No. 7277 of 2013]*** decided on 14.05.2014, to submit that any disability not recorded at the time of recruitment must be presumed to have been caused subsequently due to service conditions and that the medical board has to record a categorical opinion that the disease, reason of invaliding out of service could not have been detected on medical examination at the time of joining. Learned counsel, therefore, contended that the respondents erred in rejecting the claim of the applicant for disability pension to which he is entitled to.

4. *Per contra,* learned counsel for the respondents, in the counter affidavit, stated that in 1987, the applicant was found to be overweight by 10 Kg and was advised to reduce body weight by diet control and exercise vide AFMSF-3 dated 30.03.1987. Thereafter, learned counsel submitted that the applicant met with a road accident and was placed in low medical category for the disability 'Fracture Clavicle (Rt) and upgraded to A1G1 subsequently. That in the year 1992, the applicant was referred to IAM for General Psychiatric Evaluation due to lack of confidence in flying

duties and subsequently, placed in medical category A1G1 F(P). That again in 1995, the applicant sustained an injury 'Sprain Right Ankle (Rt)' on 11.03.1995 while playing organized basketball games and was treated at MH, Jamnagar. The applicant was placed in low medical category for (i) Sprain Ankle (Rt), (ii) Rt Renal Colic (Recovered) and (iii) Psychiatric Inv-NAD and the applicant was again advised to reduce body weight by 12-14 Kg by diet control measures. However, subsequently, the applicant's medical category was upgraded and placed in A1G1. Learned counsel for the respondents further submitted that on 05.05.1995, the applicant suffered an episode of brief loss of consciousness; he was placed in low medical category A4G4 (T-08 weeks) for the disability 'Episodic Unconsciousness' and thereafter, in October, 1997, the applicant was reviewed and was placed in LMC for disabilities '(i) Episodic Unconsciousness and (ii) Obesity. Learned counsel contended that the IMB held in December,1997 found the applicant fit to be invalided out from service for the disabilities in question which were assessed @ 15-19% individually and considered the same

as 'neither attributable to nor aggravated by military service'. Therefore, learned counsel for the respondents further asserted that as per Regulation 37 of the Pension Regulations for the Air Force, the disability pension can only be granted where the individual's disability is assessed @ 20% or over and which is attributable to or aggravated by the military service. However, in the present case, the applicant's disabilities were compositely assessed at less than 20% (15-19%) only. Hence, learned counsel prayed that the OA may be dismissed.

5. We have heard respective submissions of the learned counsel for the parties and have carefully perused the records.

6. It is undisputed that at the time of his invalidating from service, the applicant was brought before the IMB and that his disabilities were opined to be 'neither attributable to nor aggravated by military service' being constitutional in nature hence not connected with service and were assessed @ 15-19% individually and compositely assessed for both the disabilities at less than 20% (15-19%). Needless to say

that condition precedent for grant of disability element of pension is two-fold:

(i) Disability should be attributable to or aggravated by military service;

(ii) The assessment of disability should be 20% or more.

7. As per Regulations 37(a) and (b) of the Pension Regulations for the Air Force, 1961, an officer who is retired from air force service on account of a disability which is attributable to or aggravated by such service and is assessed at 20% or over, on retirement may be awarded disability pension. Hence, on a bare reading of the above Regulation, it is clear that an officer retired from service is entitled to disability pension only if disability is assessed at 20% or above and also the disability must be attributable to or aggravated by service rendered in the Air Force.

8. With regard to the issue relating to entitlement of disability pension when the assessment of disability by the RMB is less than 20% i.e. @ 15-19% for life, we may refer to the judgment dated 11.12.2019 of the Hon'ble Supreme Court in ***Union of India & Ors. Vs. Wing Commander S.P. Rathore [Civil Appeal No. 10870/2018]***, wherein it was

held that the disability element is not admissible if the disability is less than 20%, and that the question of rounding-off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off. Relevant paras of the said judgment read as under :

> ***"1. The short question involved in this appeal filed by the Union of India is whether disability pension is at all payable in case of an Air Force Officer who superannuated from service in the natural course and whose disability is less than 20%.***
>
> ***xxx xxx xxx***
>
> ***8. This Court in Ram Avtar (supra), while approving the judgment of the Armed Forces Tribunal only held that the principle of rounding off as envisaged in Para 7.2 referred to herein above would be applicable even to those who superannuated under Para 8.2. The Court did not deal with the issue of entitlement to disability pension under the Regulations of Para 8.2.***
>
> ***9. As pointed out above, both Regulation 37(a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off.***
>
> ***10. The Armed Forces Tribunal ('AFT'), in our opinion, put the cart before the horse. It applied the principles of rounding off without determining whether the petitioner/ applicant before it would be entitled to disability pension at all.***
>
> ***11. In view of the provisions referred to above, we are clearly of the view that the original petitioner/applicant before the AFT is not entitled to disability pension. Therefore, the question of applying the provisions of Para 7.2 would not arise in his case. In this view of the matter, we set aside the order of the AFT and consequently, the original application filed by the Respondent before the AFT shall stand dismissed.***

The appeal is allowed accordingly."

9. In ***Bachchan Prasad Vs. Union of India & Ors. [Civil Appeal No. 2259 of 2012]*** dated 04.09.2019, the Hon'ble Supreme Court also held that an individual is not entitled to disability element if the disability is less than 20%. Relevant portions of the said judgment read as under :

> ***"After examining the material on record and appreciating the submissions made on behalf of the parties, we are unable to agree with the submissions made by the learned Additional Solicitor General that the disability of the appellant is not attributable to Air Force Service. The appellant worked in the Air Force for a period of 30 years. He was working as a flight Engineer and was travelling on non pressurized aircrafts. Therefore, it cannot be said that his health problem is not attributable to Air Force service. However, we cannot find fault with the opinion of the Medical Board that the disability is less than 20%. The appellant is not entitled for disability element, as his disability is less than 20%."***

10. In its judgement in the case of ***Secretary, Ministry of Defence & Others Vs. Damodaran A.V. (dead) through LRs. & Others [(2009) 9 SCC 140]***, Hon'ble Apex Court clearly laid down the following principles with regard to primacy of medical opinion:-

> ***"8. When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medical category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/ invalidating medical board. The said release/invaliding***

medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/ recommended in view of the disease being capable of being improved. All the aforesaid aspects are recorded and recommended in the form of AFMSF-16. The Invalidating Medical Board forms its opinion/ recommendation on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and of course, the physical examination of the individual.

9. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the matter for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service."

11. Regarding the issue of primacy of the medical board, the Hon'ble Supreme Court in its judgment in the case of ***Union of India Vs. Ravinder Kumar [Civil Appeal No.1837 of 2009]*** decided on 23.05.2012, has explicitly viewed that :

"5. We are of the view that the opinion of the Medical Board which is an expert body must be given due weight, value and credence. Person claiming disability pension must establish that the injury suffered by him bears a causal connection with military service.

> ***6. In the instant case, the Medical Board has opined as under :***
>
> ***"ID Generalised Tonic Seizure. MA opined that ID is genetic in origin, not connected with service.***
>
> ***Thus, in view of the above, it is evident that the ailment with which respondent has been suffering from is neither aggravated not attributable to the Army Service."***

12. Moreover, with regard to the mental disorder, epilepsy etc., the Hon'ble Supreme Court in the case of ***Ex Cfn Narsingh Yadav Vs. Union of India & Ors. [(2019) 9 SCC 667]***, held as under :

> ***"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.***

Further, it was held that :

> ***".....Relapsing forms of mental disorders which have intervals of normality, unless adequate history is given at the time by the member. The Entitlement Rules itself provide that certain diseases ordinarily escape detection including Epilepsy and Mental Disorder, therefore, we are unable to agree that mere fact that Schizophrenia, a mental disorder was not noticed at the time of enrolment will lead to presumption that the disease was aggravated or attributable to military service."***

13. The Hon'ble Supreme Court in the case of ***Union of India Vs. Ex. Sep. R. Munusamy [2022 SCC OnLine SC 892]*** held that

> ***"25. ...what exactly is the reason for a disability or ailment may not be possible for anyone to establish. Many ailments may not be detectable at the time of***

medical check-up, particularly where symptoms occur at intervals. Reliance would necessarily have to be placed on expert medical opinion based on an in depth study of the cause and nature of an ailment/disability including the symptoms thereof, the conditions of service to which the soldier was exposed."

14. The applicant has been a case of 'obesity' from 1987 off and on and from time to time, he was advised to reduce weight by diet control and exercise etc. He did manage the same but time and again he was found overweight. Even in the IMB proceedings, the applicant was found to be weighing at 94 Kg., whereas the range for the same has been indicated as '60.3 – 67 – 73.7'. The disability of 'Obesity' is due to the interplay of genetic metabolic and lifestyle factors and due to failure in maintaining the ideal body weight and the same can be managed by regular exercise and restricting diet. Considering the aforesaid, and the fact that the applicant is already overweight and that the applicant had remained obese over a period of time, we find no causal connection between the disabilities and the military service, and thus uphold the opinion of the RMB.

15. The applicant was a pilot in the Flying Branch of the Air Force. In his medical category of A4G2 (Permanent), he is permanently unfit for A1, A2 & A3 duties in Flying Branch. Since the medical category was adequate for ground duties not involving unusual stress, the applicant was advised a change of Branch. However, since the applicant did not volunteer for a change of his Branch, he was advised invalidment by the Air HQ. Based on this the applicant reported for Invalidment Board. Relevant extracts of the Classified Specialist (Psychiatry) given at the time of the invalidating Medical Board is reproduced below :

> ***"This 32 yrs old Officer is an old case of EPISODIC UNCONSCIOUSNESS. Onset of disability on 05.09.95 at 12 FBSU. He is in low Med Cat A4G3 (Permanent) wef 10 Jun 97. Officers branch is Flying Pilot and the employability as per his category is permanently unfit for A1, A2 & A3 duties. Fit for ground duties not involving unusual stress. The officer is not volunteered for change of his branch and therefore Air HQ advised invalidment vide Air HQ letter No. Air HQ/21901/18308/P03(D) d/d 23 Oct Authority letter received now and officer reported for invaliding medical board....."***

Thus in the circumstances of this case, the onus of invalidment squarely rests with the applicant. Inspite of his medical category, the respondents were willing to permit applicant to continue in service in the Ground Duty Branch as he was medically unfit for duties in the Flying Branch. However, the applicant took a conscious decision not to opt for a change in Branch, even though it could have permitted him continue in service. Thus, since he chose not to change his Branch, the respondents had no choice but to invalid him out, being unfit for duties in Flying Branch. Thus, by no stretch of imagination, can now the applicant seek any accommodation of his invalidment and seek disability pension, which by itself the applicant is not eligible to, since both the disabilities are held not attributable to or aggravated by the military service and also the fact that the net assessment of the same is less than 20%.

16. In the light of the above considerations, we conclude that since the disabilities of the applicant do not meet the twin criteria of being more than 20% and being attributable to or aggravated by military service, the applicant is not entitled to the disability element and consequently not

entitled to disability pension. The OA is accordingly dismissed.

17. There is no order as to costs.

Pronounced in open Court on this 26th day of September, 2023.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P.M. HARIZ]
MEMBER (A)

/ng/

BEFORE THE ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
O.A No. 1069 /2019

IN THE MATTER OF:

FLT LT SURENDER SINGH DABAS (RETD)

[SERVICE NO.-18308]

.....APPLICANT

VS.

UNION OF INDIA & ORS.

....RESPONDENTS

MEMO OF PARTIES

FLT LT SURENDER SINGH DABAS (RETD) (18308)
S/o Late Shri Ram Singh Dabas
R/o A-414, 3rd floor, Defence Colony,
New Delhi-110024

---Applicant

Versus

1. Union of India
   Through Secretary, Ministry of Defence
   South Block, New Delhi.

2. The Chief of Air Staff
   Air Headquarters,
   Vayu Bhawan,
   Rafi Marg, New Delhi.

3. Air Cmde AV
   Dte of Air Veteran
   Subroto Park,
   New Delhi-110010

4. Joint CDA, (Air Force)
   Subroto Park, New Delhi-110010

---Respondents

Filed By:

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Date: 05 Jul 2019
Place: New Delhi