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

O.A. No. 1108 of 2018
with
M.A. No. 994 of 2018

In the matter of :

Ex Nk Diwan Ram ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Shri Virender Singh Kadian, Advocate

For Respondents : Shri Prabodh Kumar, 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. 994 of 2018 :

Vide this application, the applicant seeks condonation of 5263 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. 1108 of 2018 :

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, who is aggrieved by the impugned letter dated 14.05.2018 (Annexure A-1) vide which the applicant's claim through a legal notice for disability pension was rejected.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 02.08.1982 and was discharged from service in low medical category with effect from 30.06.2003 under Army Rule 13(3) Item III (iii) and sheltered appointment equal to his rank not being available in the unit. The applicant had completed 20 years and 11 days of service. The Medical Board held in April, 2003 assessed the applicant's disability i.e. SEIZURE DISORDER (MINOR TEMPORAL EPILEPSY) @ 20% for life and the same was considered to be 'neither attributable to nor aggravated by military service'. The applicant's claim for disability pension was rejected by the pension sanctioning authority i.e. PCDA (P) vide letter dated 27.11.2003 and the same was communicated to the applicant vide letter dated 19.12.2003. The applicant submitted a representation dated 07.01.2004

to the Ministry of Defence through IHQ of MoD (Army), which was replied to vide letter dated 08.03.2004 stating that the claim of the applicant was already rejected by the PCDA(P). Thereafter, after 14 years of the above reply, the applicant sent a legal notice-cum-representation-cum-appeal dated 03.05.2018 seeking the relief but the same was rejected vide letter dated 14.05.2018. Hence, the present OA.

3. Learned counsel for the applicant submitted that the applicant at the time of enrolment was fully fit medically and physically and no note was made in his medical documents to the effect that he was suffering from any disease at that time and thus any disability that arose during service would be attributable to/aggravated by service. He further submitted that when the disability of 'Seizure Disorder' was detected, the applicant's unit was deployed in counter insurgency area near the LoC of J&K. Thus, due to continuous stress and strain and other difficulties of the service conditions, the applicant suffered the disability. Learned counsel further submitted that even after detection of the disability in January 2001, the applicant was in active service which led to aggravation of the disease and till he got

discharged in June, 2003. The applicant was downgraded medically and ultimately he was discharged from service in low medical category i.e. S1H1A1P3E1.

4. Learned counsel further submitted that the disability pension claim was sent to the PCDA (P), but the same was rejected by the pension sanctioning authority on the basis of the opinion of the RMB. He referred to the Pension Regulations for the Army which provide that unless otherwise specifically provided, a disability pension may be granted to a person who is invalided out from service on account of a disability which is attributable to or aggravated by service and assessed @ at 20% or more and also the amount of disability pension. Learned counsel contended that the applicant was discharged from service before completion of his term of engagement being in low medical category, therefore, the applicant is deemed to be invalided out from service and is entitled to the disability pension. In support of his contentions, learned counsel relied upon the judgments of the Hon'ble Supreme Court including ***Union of India and Ors. Vs. Rajbir Singh [(2015) 12 SCC 264], Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316],***

Union of India & Others Vs. Manjit Singh ***[AIR 2015 SC 2114]***, wherein it was observed that Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed to be due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service. Referring to Rule 9 of the Entitlement Rules for Causality Pensionary Awards, 1982, the learned counsel for the applicant submitted that the applicant should have been given the benefit of doubt and the disability should have been conceded as aggravated by service only. The learned counsel further submitted that the Tribunal has already granted disability pension to many similarly situated persons.

5. Learned counsel for the applicant further placed reliance on the judgment of Hon'ble Supreme Court in ***Sukhvinder Singh Vs. Union of India and Ors.*** ***[2014 STPL (WEB) 468 SC]***, wherein it was held that whenever a member of the armed forces is invalided out of service, he would be entitled to disability pension.

6. Learned counsel for the respondents, on the other hand, submitted that the applicant's claim for disability pension was forwarded to the PCDA(P) Allahabad, which rejected the said claim vide letter dated 27.11.2003 and the applicant did not prefer any appeal against this rejection but filed a representation dated 07.01.2004 to the Ministry of Defence which was sent to Respondent No.3. The same was replied to with an advice to prefer an appeal vide letter dated 08.03.2004. However, the applicant kept silent and after about 14 years, he sent a legal notice dated 03.05.2018, which was replied to vide letter dated 14.05.2018. Learned counsel further contended that as per Para 173 of the Pension Regulations for the Army, 1961 (Part-1), the applicant was rightly denied the disability pension. He,

therefore, prayed that the present OA may be dismissed due to delay and latches.

7. We have heard the learned counsel for the parties and have perused the record.

8. Para 33 of the Guide to Medical Officers (GMO) (Military Pensions) 2002, amendment 2008, stipulates the conditions for assessing attributability of 'Epilepsy' (seizure) and is reproduced as hereunder :

> ***"33. <u>Epilepsy</u>***
>
> ***This is a disease which may develop at any age without obvious discoverable cause. The persons who develop epilepsy while serving in forces are commonly adolescents with or without ascertainable family history of disease. The onset of epilepsy does not exclude constitutional idiopathic type of epilepsy but possibility of organic lesion of the brain associated with cerebral trauma, infections (meningitis, cysticercus, encephalitis, TB) cerebral anoxia in relation to service in HAA, cerebral infraction and hemorrhage, and certain metabolic (diabetes) and demyelinating disease should be kept in mind.***
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> ***The factors which may trigger the seizures are sleep deprivation, emotional stress, physical and mental exhaustion, infection and pyrexia and loud noise. Acceptance is on the basis of attributability if the cause is infection, service related trauma.***
>
> ***Epilepsy can develop after time lag/latent period of 7 years from the exposure to offending agent (Trauma, Infection, TB). This factor should be borne in mind before rejecting epilepsy cases.***
>
> ***Where evidence exists that a person while on active service such as participation in battles, warlike front line operation, bombing, siege, jungle war-fare training or intensive military training with troops, service in HAA, strenuous operational duties in aid of civil power, LRP on mountains, high altitude flying, prolonged afloat service and deep sea diving, service in submarine, entitlement of attributability will be appropriate if the attack takes place within 6 months. Where the genetic factor is predominant and attack occurs after 6***

months, possibility of aggravation may be considered."

9. From the aforesaid, we find that there are various factors given in the aforesaid provision of GMO (MP) 2008 for determining the attributability and/or aggravation of the disease. It is also provided therein that the disease in question may develop at any age without obvious discoverable cause and the persons who develop the disease while serving in forces are with or without ascertainable family history of disease and if the attack of disease takes place within six months of the active service such as participation in battles, warlike front line operation, intensive military training with troops, service in HAA, high altitude flying, prolonged afloat service, deep sea diving etc., attributability can be assessed. In the present case, no such service conditions are shown to have been performed by the applicant or any trauma, scar etc. within the stipulated time of the onset of disease and there is no evidence on record to find a causal link to any service related trauma which can be considered to be a contributory factor to the mental condition of the applicant. In fact, as per the medical articles available on the internet, the causes for the disease are unknown but

the same could be result of the factors such as, traumatic brain injury, infections such as encephalitis or meningitis, blood vessels malformations in the brain, stroke, tumors etc. There are no such factors shown either in the present case. In view of the facts and circumstances above, there being no causal connection of the disability with the service, the same cannot be held either attributable to or aggravated by military service.

10. Furthermore, the law on the importance of the opinion of a medical board has been well settled by the Hon'ble Supreme Court. While pronouncing judgment in the case of ***Union of India & Another Vs. Ex Rfn Ravinder Kumar [Civil Appeal No. 1837/2009]***, the Hon'ble Apex Court vide its order dated 23.05.2012 had stated that in the opinion of Medical Board that ID Generalised Tonic Seizure is genetic in origin, not connected with service, should not be over-ruled judiciously unless there is a very strong medical evident to do so. Relevant part of the above judgment reads as under :

> ***"Opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension brushing aside the opinion of Medical Authorities, record the specific finding to the effect that the disability was neither attributable to nor aggravated by military service, the court should not ignore a finding for the reason that Medical Board is specialized authority***

composed of expert medical doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability due to military service and the conditions of service resulting in disablement of the individual."

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."

11. Moreover, the Hon'ble Supreme Court in the case of ***Ex Cfn Narsingh Yadav Vs. Union of India & Ors. [(2019) 9 SCC 667]***, held that there can be no mechanical application of principle that any disorder not mentioned at time of enrolment is presumed to be attributed or aggravated by military service. It also held that the scope of judicial review in the opinion of a medical board is limited, as the courts do not possess expertise to dispute the report unless there is strong medical evidence warranting it. Further, the Hon'ble Supreme Court ruling amplifies that mental disorder, which cannot be medically detected during the enrolment process cannot be claimed to be attributable to rigours of service at a later stage, relevant part of the judgment reads 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.

".....Epilepsy and 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."

12. 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."*

13. In view of the aforesaid judicial pronouncements and the parameters referred to above, we find no infirmity in the

opinion of the medical board and we are of the considered view that the disability of the applicant cannot be held attributable to or aggravated by service and hence, the relief asked for is not sustainable.

14. Accordingly, the OA stands dismissed being devoid of merits. There is no order as to costs.

Pronounced in open Court on this 29th day of October, 2023.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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