

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

OA 1119/2022 WITH MA 1522/2022

Gnr/GD Deependra Pawar (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Manoj Kumar Gupta, Advocate

For Respondents : Shri Rajan Khosla, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT. GEN. C P MOHANTY, MEMBER (A)

O R D E R

MA 1522/2023

Keeping in view the averments made in the application and in the light of the decision in **Union of India and others** Vs. **Tarsem Singh** (2009(1) AISLJ 371), the delay in filing the OA is condoned.

2. MA stands disposed of.

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3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to accept the disabilities of the applicant as attributable to/aggravated by military service and grant disability

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element of pension @20% rounded off to 50% with effect from the date of invalidment of the applicant; along with all consequential benefits.

4. The applicant was enrolled in the Indian Army on 03.07.2013 and was invalided out on 26.08.2019 after serving for approximately 06 years. The Invaliding Medical Board dated 08.06.2019 held that the applicant was fit to be discharged from service in composite low medical category S1H1A1P5E1 for the disability- DIABETES MELLITUS Type-I @ 20% for life while the qualifying element for disability pension was recorded as NIL for life on account of disability being treated as neither attributable to nor aggravated by military service (NANA).

5. The claim of the applicant for grant of disability pension was rejected and the same was conveyed to the applicant vide Letter no. 15196935W/IMB/Pen-2 dated 12.06.2021 stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service. Subsequently, first appeal was preferred by the Applicant vide letter dated 16.11.2021 and the same was rejected vide letter no. B/40502/12/2022/AG/PS-4 (1st

Appeal) dated 19.04.2022. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

6. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]***, Learned Counsel for applicant argues that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Army at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

7. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Regulation 81 of the Pension Regulations for the Army, 2008 (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 military service and is assessed @ 20% or more.

8. Relying on the aforesaid provision, Learned Counsel for respondents further submits that the aforesaid disability of

the applicant were assessed as "neither attributable to nor aggravated" by military service and not connected with the military service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

9. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the extent of disability was assessed to be above 20% which is the bare minimum for grant of disability pension in terms of Regulation 81 of the Pension Regulations for the Army, 2008 (Part-I). Now, the only question that arises in the above backdrop is whether disability - DIABETES MELLITUS Type-I suffered by the applicant was attributable to or aggravated by military service.

10. On a perusal of medical board proceedings placed on record, we find that the disability of the applicant was detected when the applicant reported to the Classified Specialist with complaints of weight loss of 14 kg in 1 month, increased thirst, increased frequency of urination and was

evaluated and found to have high sugar levels, thereby, giving rise to two questions in these circumstances:

(i) Whether the disability would have escaped detection in the initial medical examination of the applicant held at the time of his enrollment ?

(ii) Whether any lab test is carried out in fact to detect this disability during initial medical examination ?

11. On a perusal of Manual on Medical Examination and Medical Standards for Entries into Army, Trg Academies and Mil Schools issued vide Policy No. 76054/Policy/DGMS-5A dated 16.07.2019, we find that in case of Commissioning as Officers, Military Nursing Services and entry as Cadets (including AFMC Cadets) in various Training Academies for Officers and Student Nurse, a Special Medical Board is held for the purpose of initial medical examination, which includes Complete Haemogram, Urine RE/ME, X-Ray Chest PA view and USG abdomen & pelvis, which could detect disabilities such as Diabetes Mellitus Type-I & Type-II at the stage of enrollment itself. However, we find that these tests are not conducted when a person undergoes initial medical examination as a Recruit at the time of enrollment, wherein it

becomes difficult to detect such disabilities without any lab tests.

12. It is further relevant to refer to the Judgement of Hon'ble Supreme Court in ***Sukhvinder Singh v Union of India (2014) 14 SCC 364***, of which relevant Para 9 is reproduced as under:

"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."

13. On an analysis of the judgement of Hon'ble Supreme Court in ***Sukhvinder Singh (supra)***, we are of the opinion that the benefit of disability pension cannot be granted for such disabilities, which could have escaped detection during the initial medical examination, due to non-availability of any lab test to ascertain such disabilities, and that it cannot be ascertained that the disability is existing pre-enrollment. In these circumstances, the attributability of the disabilities

cannot be conceded, specifically, when the applicant has served only for approx. six years.

14. Expressing our anxious considerations on the absence of lab tests to detect disabilities during the initial medical examination in case of recruits, we are of the considered opinion that the Respondents should review the policy pertaining to the conduct of initial medical examination, and incorporate the lab tests as an essential part of initial medical examination, which would in turn would lead to initial detection of disabilities.

15. We are fully conscious of the fact that the number of candidates appearing for the recruitment process being exorbitantly high, it is not feasible for the services to conduct lab tests for all the candidates. However, it is our considered view that the validity of initial medical examination being 180 days as per Para 16 of aforesaid manual for initial medical examination, it is very well possible to conduct secondary medical examination which could include lab tests among others while the recruits are undergoing training.

16. We are of the view that this will facilitate the detection of undetected hereditary or genetics related

disorders/disabilities and ailments, which go undetected during the initial medical examination. Further, this procedure will not only save the money of the public exchequer but also reduce the number of cases of invalidations occurring within a short span of service, thereby, leading to increase in cases of disability pension before the judicial forum, even when the service has been ranging less than 10 years, and the disabilities are hereditary or genetic in nature, with no casual connection to the military service.

17. Concluding, in view of our aforesaid analysis, this OA is liable to be dismissed as devoid of merit, on the ground that the disability Diabetes Mellitus Type-I being a genetic disorder could not have been detected in the first place at the time of enrollment, during the initial medical examination, and it cannot be in anyway linked to approximately 6 years of military service, wherein only 6 months have been served by the applicant in field service, thereby, negating the argument of aggravation as well.

18. Consequently, the O.A. 1119/2022 is dismissed with the direction to the Respondents to review the

policy governing conduct of initial medical examination for recruits in the light of our observation at para 14, 15 and 16 above within 6 months from the date of pronouncement of this order.

19. A copy of this order be served to the Secretary, Ministry of Defence (MoD) and Director General of Armed Forces Medical Services (DGAFMS), who are authorities responsible for formulation of policies pertaining to medical examination.

20. No order as to costs.

21. Pending miscellaneous application, if any, stands closed.

Pronounced in the open Court on 4 day of October, 2023.

[RAJENDRA MENON]
CHAIRPERSON

[C. P. MOHANTY]
MEMBER (A)

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