

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

C.

OA 873/2019 with MA 1522/2019

Ex JWO Vinod Kumar Agnihotri Applicant
VERSUS

Union of India and Ors. Respondents

For Applicant : Mr. Praveen Kumar, Advocate

For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
30.11.2023

Vide our detailed order of even date, we have allowed the OA 873/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

MA 1522/2019

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 839 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of ***UoI & Ors Vs Tarsem Singh*** 2009(1)AISLJ 371 and in ***Ex Sep Chain Singh Vs Union of India & Ors*** (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 1522/2019 is allowed and the delay of 839 days in filing the OA 873/2019 is thus condoned. The MA is disposed of accordingly.

OA No. 873/2019

Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

- (a) ***Quash and set aside the impugned letters dated 05 Dec 2016 and 14 Feb 2019.***
- (b) ***Direct respondents to grant the disability pension @ 40% and rounding off the same to 50% for life to the applicant with effect from 01 Feb 2017 i.e the date of discharge from service with interest @ 12% p.a. till final payment is made.***
- (c) ***Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.***

BRIEF FACTS

2. The applicant was enrolled in the Indian Air Force on 17.01.1985 and was discharged from the service on 31.07.2017 in Low Medical Category A4G4 (P) without disability pension. The Release Medical Board held on 03.05.2016 assessed his disability **'Primary Angle Closure Glaucoma Both Eyes (Old)'** @ 40% for life and the net qualifying assessment was considered to be nil and same was opined as 'neither attributable to nor aggravated by military service.

3. On adjudication, AOC AFRO has upheld the recommendations of RMB and rejected the disability pension claim of the applicant vide Letter No. RO/3305/3/Med dated 27.10.2016. The outcome was communicated to the applicant vide Letter No. Air HQ/99798/1/695516/01/17/DAV /DP /RMB dated 05.12.2016 with an advice that he may prefer an appeal to the appellate committee with six months from the date of receipt of the letter.

4. The first appeal dated 27.05.2017 against rejection of disability pension was rejected by the ACFA vide Air HQ/99798/5/33/2018/695516/DP/AV-III(Appeals) dated 14.02.2019. Hence, aggrieved from the above-mentioned rejection of the disability pension, the applicant has filed the instant O.A on 22.05.2019. In the interest of justice, in terms of Section 21(1) of the AFT Act, 2007, we take up the same for consideration.

CONTENTIONS OF PARTIES

5. The learned counsel for the applicant submitted that the applicant was enrolled in the Indian Air Force in a medically and physically fit condition and added that a

member is presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. The learned counsel for the applicant further submitted that in the event of his subsequently being discharged from service on medical grounds, any deterioration in his health is to be presumed due to service conditions.

6. The learned counsel for the applicant submitted that the disability has occurred after 24 years of the service and the applicant was under stress and strain due to the rigour of the service condition which may have led to the said disability.

7. The learned counsel for the applicant submitted that the instant case is squarely covered by the judgments of the Hon'ble Supreme Court in the case of **Dharamvir Singh v. Union of India and others** (2013) 7 SCC 316, **Deokinandan Prasad Vs State of Bihar** AIR 1971 SC page 1409, CA No 2904 of 2011 in case of **Union of India & Ors. Vs Rajbir Singh** in Civil Appeal No. 2904/2011 dated 13 February, 2015.

8. Reliance was also placed as was held by the Tribunal in TA no. 48 of 2009 in WP(C) No. 6324/2007 in case of **Nakhat Bharti Vs UOI & Ors.**, TA No 208 of 2010 (WP (C) No. 9764/2009), in case of **Krishna Singh Vs Union of India**, OA No. 90 of 2014 in case **of Ex AC (U/T) Naresh Kumar Rana Vs UOI & Ors** dated 25.09.2014, O.A. 275 of 2016 in case of **Major T. Shamananda Singh Vs. Union of India & Ors.** Dated 13.07.2018, O.A. 871 of 2021 in case of **Sub. Arvind Bhushan Vs Union of India & Ors.** Dated 18.05.2022, wherein similarly situated personnel were given relief.

9. Per contra, the learned counsel for the respondents submits that the onset of the disability was in a peace area and hence it is neither attributable to nor aggravated by the military service.

10. The learned counsel for the Respondents further submits that under the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (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 Air Force service and is

assessed @ 20% or more. In other words, disability pension is granted to those who fulfill the following two criteria simultaneously:-

(i) Disability must be either attributable to or aggravated by service.

(ii) Degree of disablement should be assessed at 20% or more.

11. The learned counsel for the respondents further submits that the RMB has assessed the applicant's disabilities as neither attributable to nor aggravated by service and as the criteria (i) as above is not fulfilled, the applicant is not entitled to the grant of disability pension in accordance with prevailing rules and policies.

ANALYSIS

12. Having heard the learned counsel on both sides and the records produced before us, we are of the view that the case in hand is squarely covered by the decisions referred to hereinabove of the Hon'ble Supreme Court in the case of ***Dharamvir Singh (Supra)***, which has held that any disability sustained during the course of military service will be attributable to service conditions unless the

disability was such that the disease could not have been detected on medical examination before a person is selected for Defence Service and furthermore before arriving at a conclusion, the Release Medical Board should have assigned reasons, in writing, that the disability was not due to Military Service. There is no dispute with regard to the fact that when the applicant entered into service, he was not suffering from any disease and that the disability in question was detected/ sustained during the course of Military Service after 14 years of service.

13. Furthermore, Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service' provides as under:-

"423. (a). For the purpose of determining whether the cause of a disability or death resulting from disease is or not attributable to Service. It is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Area/Active Service area or under normal peace conditions. It is however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidences both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose

of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favor, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in case occurring in Field Service/Active Service areas.

(b). Decision regarding attributability of a disability or death resulting from wound or injury will be taken by the authority next to the Commanding officer which in no case shall be lower than a Brigadier/Sub Area Commander or equivalent. In case of injuries which were self-inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.

(c). The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the

disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in Service if no note of it was made at the time of the individual's acceptance for Service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(d). The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, in so far as it relates to the actual causes of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority.

(e). To assist the medical officer who signs the Death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on :

(i) AFMSF - 16 (Version - 2002) in all cases

(ii) IAFY - 2006 in all cases of injuries.

(f). In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the Col (Med) Div/MG (Med) Area/Corps/Comd (Army) and equivalent in Navy and Air Force."

(emphasis applied),__

has not been obliterated.

14. 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 and 11 thereof as under:

"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.

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 contracted prior to enrolment or during leave, the

incubation period of the disease will be taken into consideration on the basis of clinical courses 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 Altitude etc.”

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.

15. Reliance is placed on the amendment to Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008 at Para-35(a), which reads as under:-

"35. Glaucoma

(a) Primary Glaucoma. May be either acute or chronic. Its onset is generally speaking unaffected by service conditions; but exceptionally, an acute attack may be brought on by worry, fatigue, or illness and, if any of these were considered to be the result of service, aggravation might have to be conceded.

The onset may be insidious and it may reveal its presence for the first time as an acutely painful eye, but in the absence of evidence of undue mental or physical stress occasioned by war service, it cannot be considered that this disease is attributable to or has been aggravated by service factors."

14. It is pertinent to state that the applicant was detailed for his trade duties as MT/Fit. During his tenure, he served at various areas including field area from 2007 to 2008 in Congo on UN Mission. The applicant during his various postings carried out very strenuous and stressful duties

performed in difficult environmental conditions which could have put tremendous pressure on the health of the applicant, which cannot be overlooked. Furthermore in terms of Para 35 of the GMO (MP) 2008 itself, it has been stipulated that stress and strain is one of the known factors which can precipitate Primary Angle Closure Glaucoma. Thus, the disability of the applicant ought to be considered as attributable to and aggravated by military service. As regards the contention made by the respondents that the onset of the disease was in peace area, it has already been observed by this Tribunal in a catena of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service. It may also be taken into consideration that most of the personnel of the armed forces have to work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms.

CONCLUSION

15. In the light of our observations in the preceding paragraphs and essential parameters given aforesaid, we hereby set aside the impugned order rejecting the claim of

the applicant for disability pension and hold that the applicant is entitled to the grant of disability element of disability pension for the disability of **'Primary Angle Closure Glaucoma Both Eyes (Old)'** @ 40% from the date of discharge which is to be broad-banded to 50% for life in the light of the judgment of the Hon'ble Supreme Court in **Union of India and Ors. Vs. Ram Avtar** in Civil Appeal No. 418 of 2012 decided on 10.12.2014.

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

Pronounced in the open Court on this day of__30th
November, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER(J)

/nmk/

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

1.

MA 5459/2023 in OA 873/2019

Ex JWO Vinod Kumar Agnihotri Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Dr. V.S. Mahndiyan, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
03.01.2024

MA 5459/2023 has been filed on behalf of the applicant seeking modification of the order dated 30.11.2023 in OA 873/2019 vide para-2 thereof it was stated to the effect:-

"2. The applicant was enrolled in the Indian Air Force on 17.01.1985 and was discharged from the service on 31.07.2017 in Low Medical Category A4G4 (P) without disability pension."

to submit to the effect the date of discharge of the applicant is not 31.07.2017 as mention therein rather 31.01.2017.

Notice of the application is issued and accepted on behalf of the respondents. A perusal of the original records of OA 873/2019 indicates that as averred in para-1 in the category of Brief History in the counter affidavit dated 06.12.2019 filed by the respondents, it has been stated to the effect:-

"1. That the applicant herein was enrolled in the IAF 17.01.1985 and stood discharge therefrom on 31.01.2017 under the clause "on fulfilling the conditions of his enrolment" after rendering total 32 years and 15 days of regular service and further underwent initial medical exam whereby he was declared fit in medical category 'AYE' vide AFMSF-2A dated 22.12.1984."

indicating thus clearly that the date of discharge of the applicant was 31.01.2017 and not 31.07.2017. In view thereof, the order dated 30.11.2023 in OA 873/2019 is rectified to read to the effect:-

"2. The applicant was enrolled in the Indian Air Force on 17.01.1985 and was discharged from the service on 31.01.2017 in Low Medical Category A4G4 (P) without disability pension."

The MA 5459/2023 is thus disposed of accordingly.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)