

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

1.

OA 1249/2017

Ex Sep Keshav Arjun Shegokar Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Santosh Kumar Pandey, Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT. GEN P.M.HARIZ, MEMBER (A)

ORDER
28.08.2023

Order allowing the OA pronounced, signed and
dated.

(JUSTICE ANU MALHOTRA) /
MEMBER (J)

(LT. GEN P.M.HARIZ,) /
MEMBER (A)

/CHANANA/

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ORDER

OA 1249/2017

The applicant vide the present OA makes the following prayers:-

(a) Quash the order dated 22.06.2005 passed by the respondents whereby the claim of the applicant for the disability pension was rejected.

(b) Direct the Respondents to pay disability pension for the disabilities i.e. i) pulmonary tuberculosis and ii) disseminated chorodities (LE) (tubercular) to the Applicant alongwith arrears with interest @ 18% per annum.

(c) Direct the Respondents to grant the benefits of broad band for the said disabilities in terms of circular dated 31.01.2001 alongwith arrears with interest @ 18% per annum.

(d) Issue such other order/ direction as may be deemed appropriate in the facts and circumstances of the case.

2. The applicant Ex Sep Keshav Arjun Shegokar No. 6919557H was enrolled in the Indian Army Ordinance Corps on 25.11.1983 and discharged locally from service on 29.02.1996 (forenoon) under Army Rule 13(3)III(V) on having earned five red entries and as per letter no.

A/13210/159/AG/PS-2© dated 28.12.1998 was stated to have rendered himself undesirable.

3. The applicant whilst posted with the Central Ordinance Depot, Delhi was downgraded to medical categories **"CEE (Temporary)** for 6/12 years for the diagnosis of **"Pulmonary tuberculosis (011)"** and **"CEE (EYE) (Temporary)** for 6/12 years for the diagnosis of the disability of **"Disseminated Choroiditis Tubercular 363"** with effect from 15.01.1993 vide AFMSF-15 dated 01.01.1993. The applicant appeared before the Medical Board for re-categorisation and was upgraded to medical category 'BEE' Temporary for 6/12 years again for the Pulmonary Tuberculosis and retained in medical category 'CEE' (Temporary) for 6/12 years for the diagnosis **Disseminated Choroiditis (RT) EYE** vide AFMSF-15A dated 01.01.1993. The applicant appeared again before the Medical Board for re-categorisation and was upgraded to the medical category AYE for the diagnosis **"Pulmonary Tuberculosis"** with effect from 12.08.1994 but was placed in medical category **"CEE (Permanent)"** for the diagnosis **"Disseminated Chorioretinitis (RE)"** with effect from 12.08.1994 vide AFMSF-15A dated 12.08.1994. Prior to his discharge, the applicant was brought before the Release Medical Board at the Military Hospital, Pulgaon Camp vide AFMSF-16 dated 09.02.1996. The RMB found the applicant fit to be released from service in LMC **CEE (Permanent)** for the diagnosis **Disseminated Chorid**

Retinis 363 RT Eye. The medical authorities also opined that the diagnosis of Disseminated Choroid Retinis 363 Rt Eye of the applicant be regarded as aggravated by service with the net assessment @ 30% for two years. In view of the applicant having earned more than four red entries in terms of the notes Para-2(c) to Appendix 'c' to integrated HQ of Ministry of Defence (Army) letter no. B/40122/MA/(P)/AG/PS-5 dated 20.07.2006, the applicant being a PBOR was discharged on administrative grounds having earned more than four red entries and was thus held to be not eligible for the grant of disability pension despite his disability fulfilling the twin eligibility conditions of having being aggravated by military service and being assessed with a percentage of disablement of 30 % disablement for two years.

4. The disability pension claim of the applicant was rejected vide letter dated 16.07.1997 stating that the applicant had been discharged from service being no longer required having incurred five red entries, and thus the claim was untenable. The applicant was informed of the same vide letter no. C/6919557/Pen/Dis_II dated 12.08.1997.

5. The applicant's wife submitted a petition dated 27.01.2005 seeking the grant of pension to the applicant alongwith the other facilities of Ex-serviceman which was forwarded to the IHQ, MoD (Army) and the Army Ordinance Corps Records vide letter no. B/41040/AG/PS-4(PGC)/43 dated 05.04.2005 appraised the office of the ADGPS that the applicant

was not entitled to any pensionary benefits having been discharged on 29.02.1996 (Forenoon) from the Indian Army under Army Rule 13(3)III(V) as his services were no longer required.

CONTENTIONS OF THE PARTIES

6. The applicant vide the present OA has submitted to the effect that he has been deprived of the disability pension illegally despite his disability being attributable to military service. *Inter alia* the applicant submits that he suffered from the said disability in 1992 after long years of service and that the denial of the disability pension to him is a mechanical exercise of power. The applicant further submits that the duties of the applicant were strenuous in nature and were the major contributory factors towards the causation of the said disability. The applicant has further submitted that in terms of the law laid down by the Hon'ble Supreme Court in *Dharamvir Singh vs. Union of India & Ors.* in 2013(7) SCC 316 he is entitled to the grant of the disability element of pension which is to be broad banded in terms of the verdict of the Hon'ble Supreme Court in the case of *Union of India & Ors. vs. Ram Avtar* Civil Appeal No. 418/2012 decided on 10.12.2014.

7. The respondents through the counter affidavit dated 09.10.2018 submit to the effect that in as much as the applicant had been discharged on administrative grounds on having earned more than four red entries, he is not eligible for the grant of the disability element of pension. *Inter alia*

the respondents submit that the applicant having not completed the requisite period of fifteen years of qualifying service, he is not entitled to the grant of the service element of pension as laid down by the Hon'ble Supreme Court vide order dated 10.08.2010 in Civil Appeal No. 4486/2002 in the case of *Bhola Singh vs. Union of India & Ors.* The respondents further submit that the applicant is not entitled for disability pension and thus there is no question of broad banding for the same also.

8. The details of the red ink entries earned by the applicant are stated in Para 2 of the counter affidavit of the respondents as under :-

“

S. No	Date of award	Army act/ section/ nature of offence	Punishment awarded	Nature of entries	Authorities awarded the punishments
a.	10.10.93	AA Sec.39(a) "absent Himself Without leave	28 days RI in Military custody	Red Ink	OC Troops CAD Pulgoan.
b.	17.12.93	AA Sec-39(b) Without sufficient cause overstaying leave granted.	28 days RI in Military custody	Red Ink	OC Troops CAD Pulgoan.
c.	15.11.1994	AA Sec 39(b) without sufficient cause overstaying leave granted.	14 days RI in Military custody	Red Ink	OC Troops CAD Pulgoan.
d.	27.06.1995	AA Sec 39(b) Without sufficient cause overstaying leave granted.	07 days RI in Military custody	Red Ink	OC Troops CAD Pulgoan.
e.	04.11.95	AA Sec 39(a) Absence Himself Without leave	07 days RI in Military custody	Red Ink	OC Troops CAD Pulgoan.

”

9. The applicant vide the rejoinder dated 03.08.2019 submitted on his behalf reiterated the averments made in the OA and submits to the effect that the Para-2(c) of the notes of the appendix 'c' to the Integrated HQ of

MoD Army letter dated 20.07.2006 is not a statutory regulation and that the Pension Regulations for the Army do not prohibit a person who earns red entries from receipt of pension. *Inter alia* the applicant has placed reliance on the order dated 04.03.2013 of the Armed Forces Tribunal, Regional Bench, Kolkata in *Ex Sepoy Bhaba Prasanna Panda vs. Union of India & Ors.* in OA 7/2012 to contend to the effect that in that case the applicant who was discharged on the ground of red ink entries was held entitled for disability pension.

ANALYSIS

10. Undoubtedly, the applicant in the instant case has not completed the qualifying length of service of 15 years and he is thus not entitled to the service element of pension. As regards the claim of the applicant in relation to the grant of the disability element of pension for the disability of '**Pulmonary Tuberculosis**', the averments in the counter affidavit of the respondents bring forth categorically that the applicant had been upgraded in the medical category 'AYE' with effect from 12.08.1994 vide AFMSF-15A dated 12.08.1994 for the said disability. No relief in relation to the said disability can thus be granted.

11. However, in relation to the disability of **Disseminated Choroid Retinitis 363 RT Eye**, the RMB had itself opined the disability of the applicant to be aggravated due to military service and assessed it with a disablement percentage of 30% for two years. As seen from the records,

the applicant was placed in Low Medical Category CEE (Permanent) by the re-categorisation medical board vide AFMSF-15A dated 12.08.1994. Thus at the point of discharge this disability was of a permanent nature and therefore the opinion of the RMB that the disability @30% of the applicant **Disseminated Choroid Retinitis 363 RT Eye** is only for two years cannot be accepted. The said disability is apparently of a permanent nature and that the assessment of the same as being a disability for two years only cannot be accepted is fortified in view of Para 7 of the letter no. 1(2)/97/D(Pen-C) GoI/MoD letter dated 07.02.2001 and in terms of the verdict of the Hon'ble Supreme Court in the case of *Cmdr Rakesh Pande vs. Union Of India & Ors.* in Civil Appeal No. 5970/2019 and is thus held to be a disability of a permanent nature.

12. Taking into account the factum that the disability of the applicant of **Disseminated Choroid Retinitis 363 RT Eye** was opined by the RMB itself admittedly to be attributable to service, we hold that the applicant despite having incurred five red ink entries is entitled to the grant of the disability element of pension in relation thereto. We are fortified in our view, in view of the order dated 04.03.2013 of the AFT, RB, Kolkata in OA 7/2012 to similar effect. Furthermore, it is essential to observe that though the applicant in view of his red ink entries is not entitled to the grant of Invalid Pension, he cannot be denied the disability benefits for a disability attributable to military service, in as much as the applicant has

been afflicted with 30% of disablement for life with the disability of **Disseminated Choroid Retinitis 363 RT Eye** and being denied both the disability element of pension coupled with discharge from service amounts to double jeopardy and is wholly unjust. It is also essential to observe that both in the case of *Sep Akhil D J vs. Union of India & Ors.* 2022 SCC Online AFT 6887 of the Armed Forces Tribunal, Regional Bench, Lucknow and in the case of *Bhola Singh vs. Union of India & Ors.* in Civil Appeal No. 4486/2002, a verdict of the Hon'ble Supreme Court, relied upon on behalf of the respondents, the applicants thereof were held entitled to the disability element of pension.

CONCLUSION

16. The prayers made through the present OA are thus disposed of to the effect that the applicant is held entitled to the grant of the disability element of pension in relation to the disability of "**Disseminated Choroid Retinitis 363 RT Eye**" which in terms of the verdict of the *Union of India & Ors. vs. Ram Avtar* in Civil Appeal No. 418/2012 is broad banded to 50% for life, from the date of discharge. However, in terms of the verdict of the Hon'ble Supreme Court in *UOI & Ors. vs Tarsem Singh* 2009(1)AISLJ 371, the relief granted to the applicant in relation to the arrears of the disability pension shall be confined to [^]commence from period of three years prior to the date of the institution of the present OA.

17. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and in the event of default; the applicant shall be entitled to the interest @6% per annum till the date of payment.

Pronounced in the Open Court on the 28th day of August, 2023.

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

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/yogita/