

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

C..

OA 142/2021 with MA 173/2021

Ex SGT S Manazir Abid Hasan ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. Praveen Kumar, Advocate  
For Respondents : Mr. R S Chhillar, Advocate

CORAM

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

ORDER  
01.12.2023

Vide our detailed order of even date, we have dismissed the OA 142/2021. Learned counsel for the applicant 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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**OA No. 142/2021 With MA 173/2021**

**Ex Sgt S Manazir Abid Hasan**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Mr. Praveen Kumar, Advocate**

**For Respondents : Ms. R S Chillar, Advocate**

**CORAM :**

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

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

**ORDER**

**M.A. 173/2021**

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 2920 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 1479/2018 is allowed and the delay of 2920 days in filing the OA 142/2021 is thus condoned. The MA is disposed of accordingly.

**O.A. 142/2021**

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this O.A and the reliefs claimed in Para 8 - read as under:

“

1. ***Quash and set aside the impugned letters dated 03.12.2020***
2. ***Direct the respondents to grant the disability pension and rounding off the same to 50% for life for the disability (i) Bicuspid Aortic Valve to the applicant with effect from 01.05.2012 i.e. the date of discharge from service with interest @12% p.a. till final payment is made.***

**3. 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 21.04.1992 and retired from the Indian Air Force on 30.04.2012 after rendering 20 years and 10 days of service. At the time of discharge, the Release Medical Board was conducted in which the applicant's disability ID **Bicuspid Aortic Valve** was assessed to be 30% for life and was considered to be neither attributable to nor aggravated by service as per the RMB held on 08.07.2011.

3. The claim for the grant of the disability pension was processed and rejected by AOC AFRO vide impugned letter No. RO/3305/3/MED CAT (D) dated 11.11.2011 on the ground that the disability of the applicant was assessed to be neither attributable to nor aggravated by service in terms of Para 153 of the Pension Regulation for the Air Force, 1961, Part-I.

4. The applicant, thereafter, served representation/legal notice to the respondents for the grant of the disability element of pension dated 09.11.2020. However, the respondents

processed and rejected the same vide letter No. Air HQ /99798/ 4/1/ 740674/ DAV/DP/CC dated 03.12.2020 Aggrieved by this, the applicant has filed the instant O.A. and thus, in the interest of justice, in terms of Section 21(1) of AFT Act, 2007, we take up the same for consideration.

### **CONTENTIONS OF THE PARTIES**

5. The learned counsel for the applicant submitted that the Release Medical Board has assessed the disability of the applicant at 30% for life and opined the disability of the applicant as neither attributable to nor aggravated by military service.

6. The learned counsel for the applicant further submitted that the applicant sustained the said disability at Air Force Station , New Delhi, which is a peace station, it should have been treated as attributable to or aggravated by service. The learned counsel for the applicant submitted that the applicant suffered with the said disability due to stress and strain in the service and the disability of the applicant is incurable and worsening day by day.

7. The learned counsel for the applicant placed reliance upon Para 5 of the Entitlement Rules for Casualty Pensionary Awards, 1982, which reads as under :

***"The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:***

***Prior to and during service***

***(a) A member is 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.***

***(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health, which has taken place, is due to service."***

8. The learned counsel also placed reliance on the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India, Civil Appeal No. 4949 of 2013, (2013) 7 SCC 316***, and submitted that whether the disability is attributable to or aggravated by military service is to be determined by the Entitlement Rules for Casualty Pensionary Awards, 1982 as



shown in Appendix-II , the Government of India letter No. 1(1)/81/d(Pen-C) dated 20.06.1996 and GMO, 2002.

9. The learned counsel for the applicant placed reliance on the judgment of Armed Forces Tribunal, Regional Bench, Chennai in OA No.68/2021 titled as **Ex JWO Raju Ganesan Vs. Union of India & Ors.**, wherein the applicant was granted disability element of pension for the disability Bicuspid Aortic Valve and Primary hypertension.

10. Per contra, the learned counsel for the respondent submits that the applicant was discharged on 31.03.2018 and has not preferred any appeal against the rejection of the claim of the disability pension. The learned counsel for the respondents submitted that the disability of the applicant is congenital and there is no sign of stress and strain due to service which may have led to the occurrence of the said disability.

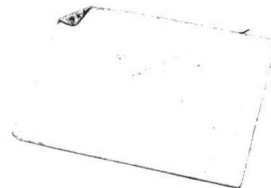
11. The learned counsel for the respondents relied upon Rule 153 of the Pension Regulation for IAF, 1961 (Part-I) which stipulates that, the primary condition for the grant of disability pension is granted when the personnel is invalided

out from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or more. The learned counsel for the respondents submits that the disability of the applicant was not attributable to military service and hence cannot be granted any relief.

### **ANALYSIS**

12. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the extent of the disability assessed by the RMB is 30 % for the aforementioned disability and the minimum qualifying criteria for the grant of the disability pension is 20% or more for grant of disability pension in terms of Para 153 of the Pension Regulation for the Air Force, 1961. In the instant case, the applicant sustained the said disability at Air Force Station at New Delhi. However, the RMB dated 08.07.2011 conducted at the time of release dated 08.07.2011 considered the disability "Bicuspid Aortic Valve" as neither attributable to nor aggravated by service.

13. It is pertinent to mention herein that after perusal of available scientific literature in public domain it is safe to say that the disability 'Bicuspid Aortic Valve' is a congenital /



hereditary disease which appears in a person from birth. Thus, after perusal of the material on record we are unable to accept the contention of the applicant disability in question has any causal connection whatsoever with the performance of military service for the grant of disability pension. To this effect reliance is placed upon Para 22 of the Guide to Medical Officer (Military Pension, 2008 which reads as under:-

*“ 22. **Congenital Heart Disease.** It has been routinely observed that cases of congenital heart diseases like atrial septal defect/Mitral valve prolapse having escaped detection at the time of recruitment become symptomatic and detected very late in service. These will be conceded as neither attributable nor aggravated by military service.”*

14. In the facts of the instant case it is apparent that the disability of the applicant, has no causal connection between the said disability and the military duty since the applicant's disability is congenital which has no relationship with the performance of any military duty. The RMB has, therefore, rightly assessed the disability of the applicant as neither attributable to nor aggravated by service.

15. Furthermore, reliance was placed on behalf of the respondents on the order of the Tribunal in OA115/2019 in the case of **Ex Nk Ramesh Chandra Vs. Union of India & Ors.** decided on 30.09.2019 wherein it was observed as under :-

*“ 7. We have noted that the applicant was enrolled in the Army on 01.02.1988 and as per RMB his disease “BICUSPID AORTIC VALVE 4 O.A. No. 115 of 2019 Ex Nk Ramesh Chandra DISEASE (MILD AORTIC REGURGITATION)” was detected within 2 years & 10 months of his enrolment i.e. on 13.11.1990. The RMB has denied attributability to military service on the ground that it is a congenital defect i.e. a defect in the heart which has developed before birth, in the womb. Medical literature available on this subject is very clear that this disease is a congenital disease i.e. a normal heart has an ‘AORTIC VALVE’ which is ‘TRICUSPID’ i.e. has three parts or has three leaflets, whereas the ‘AORTIC VALVE’ of a person suffering with this congenital disease will have two parts or two leaflets that is why it is called ‘BICUSPID AORTIC VALVE’ and is a congenital defect.*

*8. Thus since this defect is well known in medical literature and it develops before birth in the womb, we by no stretch of imagination can presume it to be*

due to stress & strain of military service. We are satisfied with the reasons given in RMB as to why this disease could not be detected at the time of enrolment. The Hon'ble Apex Court judgment in the case of *Dharamvir Singh vs. Union of India & others* (2013) 7 SCC 316 is of no help to the applicant in this case.

9. In the circumstances as mentioned above, the applicant has not been able to prove his case, hence liable to be dismissed and is dismissed being devoid of merit."

16. However, reliance placed by the applicant on the order of the Armed Forces Tribunal, Regional Bench, Chennai in OA 68 of 2021 titled as ***Ex JWO Raju Ganesan Vs. Union of India & Ors.*** wherein the applicant was granted disability element of pension in relation to the disability Bicuspid Aortic Valve and Primary Hypertension is misplaced. As laid down by the Hon'ble Supreme Court in ***State of UP and Anr. Vs. Synthetics and chemicals Ltd.*** (1991) 4 SCC 139, " a decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind"- Salmond, on Jurisprudence, 12<sup>th</sup> Edition Page 153

which principle was reiterated by the Hon'ble Supreme Court in **Arnit Das Vs. State of Bihar**, (2000) 5 SCC 488. To similar effect are the observation of the Hon'ble Supreme Court in **A-One Granites Vs. State of U.P. & Ors** (2001) 3 SCC 537. Thus, the orders in the case of **Ex JWO Raju Ganesan (supra)** is sub-silentio in relation to the causes of the disability of 'Bicuspid Aortic Valve' being congenital in nature.

### **CONCLUSION**

17. In the instant case, we thus hold that the disability of the applicant which is congenital, has no causal connection with military duty and therefore, there is no merit in the case, the OA 142/2021 is thus dismissed.

Pronounced in the open Court on this day of 18<sup>th</sup> November, 2023.

**[REAR ADMIRAL DHIREN VIG]**  
**MEMBER(A)**

**[JUSTICE ANU MALHOTRA]**  
**MEMBER(J)**

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