

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

2.

OA 1705/2021 with MA 1663/2021

Ex POME Sunil Kumar Singh	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Mr. Ajit Kakkar, Advocate
For Respondents	:	Mr. Shyam Narayan, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
22.12.2023

Vide separate detailed order passed today. OA allowed in part.

Learned counsel appearing for the respondents makes an oral prayer for grant of leave to appeal to appeal for impugning the aforesaid order before the Hon'ble Supreme Court. However, there being no point of law, much less any point of law of general public importance involved in the order, which warrants grant of leave to appeal, the oral prayer is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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

O.A. No. 1705 of 2021

with

M.A. No. 1663 of 2021

and

M.A. No. 902 of 2022 ✓

In the matter of :

Ex-POME Sunil Kumar Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Ajit Kakkar, Advocate

For Respondents : Shri Shyam Narayan, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

M.A. No. 902 of 2022 : ✓

Vide this application, the respondents seek condonation of delay of 7 days in filing the counter affidavit. In view of the averments made, delay is condoned. Counter affidavit is taken on record. MA stands disposed of.

M.A. No. 1663 of 2021 :

Vide this application, the applicant seeks condonation of 940 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 accordingly.

O.A. No. 1705 of 2021 :

By way of the present application filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant, in Para 8, is seeking following reliefs :

- (a) To direct the respondents to bring all service and medical documents on record.**
- (b) To grant disability pension to the applicant for all his disabilities from his discharge date i.e. 28.02.2018.**
- (c) To direct the Respondents to issue a corrigendum PPO pertaining to the disability pension of the applicant.**
- (d) To direct the Respondents to pay arrears of disability pension and broad band disability**

pension along with interest @ 12% from the date of discharge i.e. 28.02.2018.

- (e) To direct the Respondents to grant leave encashment from the date of discharge.***
- (f) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.***

2. Briefly, the facts of the case are that the applicant was enrolled in the Indian Navy on 02.02.1995 and was discharged from service on 28.02.2018 being in low medical category S2A2 (P) Pmt. Before his discharge, the applicant was brought before the duly constituted Release Medical Board held on 23.02.2018, which assessed the disabilities of the applicant i.e. (1) SYSTEMATIC HYPERTENSION @ 30%; (2) TYPE-2 DIABETES MELLITUS @ 20%; and (3) BICUSPID AORTIC VALVE, SEVERE AORTIC REGURGITATION AND DILATED ASCENDING AORTA (OPERATED) @ 60%, compositely assessed @ 77.5% rounded off to 80% for life. While the disability (1) Systematic Hypertension was conceded as 'aggravated by service', the other two disabilities were

considered as 'neither attributable to nor aggravated by service'. Accordingly, the applicant was sanctioned disability element of disability pension @ 30% for Systematic Hypertension with effect from 01.03.2018 with rounding off benefit @ 50% vide PPO No. 248201802163 dated 05.07.2018.

3. The applicant preferred his first appeal dated 30.01.2021 for grant of disability pension with regard to the disabilities IDs (2) and (3) also i.e. Type-2 Diabetes Mellitus and Bicuspid Aortic Valve, Severe Aortic Regurgitation and Dilated Ascending Aorta (Operated), which was forwarded by the Naval Pension Office to the Directorate of Pay & allowance (for Cmde (P&A)) IHQ MoD (Navy) vide letter dated 19.03.2021 for consideration. Time bar sanction was granted for the first appeal vide letter dated 25.05.2021 with a request to forward certain documents by the applicant, to which the applicant replied vide his letter dated 12.06.2021. The first appeal is stated to have been replied to by the respondents vide letter dated 11.05.2022. The applicant is also aggrieved by non-grant of leave encashment for 200 days admissible to him. Hence, this OA.

4. Learned counsel for the applicant pleaded that the applicant was found mentally and physically fit for joining the Naval service and no note was made in his medical record to the effect that he was suffering from any disease at that time. Therefore, as the disabilities arose during the service, same should be held as attributable to the Naval service and any medical disability contracted by him during the course of his service should be treated as attributable/aggravated by the stresses and strains of his service. Learned counsel explained about the stressful and challenging conditions of service having served in many field/afloat services by the applicant during his service tenure and the applicant had discharged his duties with utmost dedication and sincerity despite the fact that he was diagnosed with the first disability i.e. Systematic Hypertension in 2007 and other two disabilities were diagnosed in 2012 (Type-2 Diabetes Mellitus) and 2017 (Bicuspid Aortic Valve) and the applicant suffered all these disabilities because of stress and strain of service.

5. Learned counsel for the applicant relied upon the judgment of the Hon'ble Supreme Court in **Dharamvir Singh**

Vs. Union of India & Ors. [2013 (7) SCC 316], wherein the Apex Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that an 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 being in low medical category, 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.

6. Learned counsel, therefore, submitted that the respondents' action in denying the disability pension for

disabilities Type-2 Diabetes Mellitus and Bicuspid Aortic Valve is unjustified and unlawful, when the disabilities occurred during the military service and were caused due to stress and strain of service. The learned counsel, therefore, prayed that the above two disabilities in question may also be held as attributable to/aggravated by military service and that the disability pension may be granted to the applicant in respect of these two disabilities also.

7. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, being an expert body, found the disabilities in question i.e. Type-2 Diabetes Mellitus and Bicuspid Aortic Valve as "Neither Attributable to Nor Aggravated by Service", and that the applicant has already been granted disability element of pension for 'Systematic Hypertension', which was considered as 'aggravated by service' by the RMB. Learned counsel contended that in view of Regulation 105-B of the Navy Pension Regulations, 1964, which provides that the disability pension is granted when the disability should be either attributable to or aggravated by

Naval service and minimum assessment thereof is mandatorily required to be 20% or more and hence, the OA deserved to be dismissed.

8. We have heard the learned counsel for the parties and have gone through the records. We find that the issue which needs to be considered is as to whether the disabilities of the applicant i.e. Type-2 Diabetes Mellitus and Bicuspid Aortic Valve are attributable to or aggravated by military service or not.

9. In the instant case, it is an undisputed fact that at the time of joining the Indian Navy on 02.02.1995, the applicant was found medically and physically fully fit and all the disabilities have admittedly occurred during service and at the time of discharge, the applicant was in low medical category S2A2(P) Pmt.

10. The law on the issue of attributability of a disability is already settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India [(2013) 7 SCC 316]***, wherein the Apex Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules

and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that an 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 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.

11. 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."

12. As regards the disability ID (2) Type-2 Diabetes Mellitus, as per the amendment to Chapter VI of 'Guide to Medical Officers (Military Pensions), 2008, Para 26 thereof, Type 2 Diabetes Mellitus is to be conceded as aggravated if the onset occurs while serving in Field/CIOPS/HAA/prolonged afloat service and consequent to being diagnosed as 'Type-2 Diabetes Mellitus' who are required to serve in these areas. Furthermore, inter alia stress and strain because of service reasons are stated therein to be known factors which can precipitate diabetes or cause uncontrolled diabetic state. The relevant portions of Para 26, Chapter VI of the GMO (MP), 2008, read as under :

"26. Diabetes Mellitus

This is a metabolic disease characterised by hyperglycemia due to absolute/relative deficiency of insulin and associated with long term complications called microangiopathy (retinopathy, nephropathy and neuropathy) and macroangiopathy.

There are two types of Primary diabetes, Type 1 and Type 2. Type 1 diabetesType 2 diabetes is not HLA-linked and autoimmune destruction does not play a role.

Secondary diabetes can be due to drugs or due to trauma to pancreas or brain surgery or otherwise. Rarely, it can be due to diseases of pituitary, thyroid and adrenal gland. Diabetes arises in close time relationship to service out of infection, trauma, and post surgery and post drug therapy be considered attributable.

Type 1 Diabetes Type 2 diabetes is considered a life style disease. Stress and strain, improper diet non-compliance to therapeutic measures because of service reasons, sedentary life style are the known factors which can precipitate diabetes or cause uncontrolled diabetic state.

Type 2 Diabetes Mellitus will be conceded aggravated if onset occurs while serving in Field, CIOPS, HAA and prolonged afloat service and having been diagnosed as Type 2 diabetes mellitus who are required serve in these areas.

Diabetes secondary to chronic pancreatitis due to alcohol dependence and gestational diabetes should not be considered attributable to service."

13. Further, the Hon'ble Supreme Court also in the case of **Commander Rakesh Pande Vs. Union of India & Ors. [Civil Appeal No. 5970 of 2019]** decided on 28.11.2019, has upheld the decision of the Armed Forces Tribunal granting disability pension in respect of diabetes to the applicant. Therefore, the disability of the applicant i.e. Type-2 Diabetes Mellitus is to be considered as attributable to/aggravated by Naval service.

14. However, as regards the disability 'Bicuspid Aortic Valve', it is pertinent to mention herein that after perusal of available scientific literature in public domain, we find that the disability 'Bicuspid Aortic Valve' is a congenital/hereditary disease which appears in a person from birth. Thus, the contention of the applicant disability in question has any causal connection whatsoever with the performance of Naval service for the grant of disability pension. In this regard, we may refer to Paras 83 of the Guide to Medical Officers (Military Pensions), 2002 amendment 2008 (hereinafter referred to as 'GMO (MP) 2008'). The same reads as under:-

"83. Valvular Heart Disease. The principal causes of valvular heart disease are Rheumatic carditis, other causes being congenital, ischemic heart disease, infective endocarditis and cardiomyopathy. It takes several years for valvular disease to develop from the onset of rheumatic fever. Attributability or aggravation can be conceded by judging the merit of each case and also considering the primary disease. Mitral valve prolapse (floppy mitral valve) is commonly detected in Armed Forces. It is primarily a congenital abnormality. Hence it will be conceded as neither attributable nor aggravated by military service."

With regard to congenital heart disease, Para 22 of the GMO (MP) 2008 can also be relied upon, 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.”

15. From the aforesaid provisions, it is clear that Bicuspid Aortic Valve is a congenital heart disease detection of which could escape while medical examination during joining of service and can be detected very late in service. In view of this, it is apparent that the disability of the applicant, has no causal connection between the said disability and the naval service since the applicant's disability is congenital which has no relationship with the performance of any naval duty. The RMB has, therefore, rightly assessed the disability of the applicant i.e. Bicuspid Aortic Valve as neither attributable to nor aggravated by service. The verdict of Hon'ble Supreme Court in *Dharamvir Singh (supra)* with regard to this disability will not benefit the applicant.

16. In view of the aforesaid discussion, in addition to the disability ID (1) Systematic Hypertension, for which the applicant has already been granted disability element of pension, the applicant is now also held entitled for the disability element of pension in respect of the disability ID (2) i.e. Type-2 Diabetes Mellitus. However, the disability ID (3) Bicuspid Aortic Valve, having no causal connection with the Naval service, is not accepted as attributable to or aggravated by Naval service and thus the applicant is not entitled to disability pension for this disability.

17. As the applicant has been held entitled to the disability element of pension for the disabilities i.e. (1) Systematic Hypertension @ 30% and (2) Type-2 Diabetes Mellitus @ 20%, the composite assessment of the above disabilities is being calculated as per MoD letter No. 16036/RMB/IMB/DGAFMS/MA (pens) dated 14.12.2009 as under :

Disability (1) = 30% (the disability with maximum percentage)

Disability (2) $(100-30) = 70 \times 20/100 = 14\%$

Composite Assessment = $30 + 14 = 44\%$

The rounding off composite assessment of 44% will be 50%.

CONCLUSION

18. Accordingly, the OA is partially allowed in that, in addition to disability ID (1) Systematic Hypertension, the applicant is entitled to element of pension for disability ID (2) Type-2 Diabetes Mellitus. Therefore, the composite entitlement for the two disabilities is 44%, which is further rounded off to 50%. The applicant is already in receipt of 50% disability element of pension as applicable to ID (1) Systematic Hypertension @ 30% rounded off to 50%. As regards the prayer for grant of leave encashment, since required details have not been provided, this cannot be adjudicated.

19. Pending MAs, if any, stand closed accordingly. No order as to costs.

Pronounced in open Court on this 22 day of December, 2023.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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