

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

Suppl.
A..

OA 1710/2019

Ex LEM(P) Radha Charan

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Ved Prakash, Advocate

For Respondents : Mr. Anil Gautam, Advocate

CORAM

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

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

ORDER
22.12.2023

Vide our detailed order of even date, we have allowed the OA 1710/2019. 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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ORDER

The applicant 'Ex LEM (P) Radha Charan' No. 138436-B vide
the present OA makes the following prayers:-

*"(a) Quash the Impugned Letter No.
PEN/600/D/LRDO 1:01/2019/138436B dated
21.02.2019.*

*(b) Direct the respondents to grant disability element
of pension to the applicant duly rounded off to 50%
w.e.f his date of discharge.*

*(c) Direct respondents to pay the due arrears of
Disability element of Pension with interest @12% p.a
from the date of retirement with all the consequential
benefits.*

*(d) Any other relief which the Hon'ble Tribunal may
deem fit and proper in the fact and circumstances of
the case along with cost of the application in favour
of the applicant and against the respondents."*

2. The applicant joined the Indian Navy on 28.01.2004 and was discharged on 31.01.2019 on expiry of engagement after 15 years and 04 days of qualifying service. Subsequently, he was sanctioned Service Pension vide PPO No. 248201900329 dated 15.01.2019.

3. At the time of discharge, the applicant was placed in low medical category S3A2(P) PMT for his disability viz 'SEIZURE DISORDER ICD NO. G40.01 (vide Para 33 of Chapter VI GMO (MP) 2008). The Release Medical Board held on 14.08.2018 assessed the disability as 'Neither Attributable to Nor Aggravated by the Service (NANA)' with composite assessment of 20% for life. However, the net assessment qualifying for disability pension is recorded as NIL for life. Since his disability was 'NANA', the applicant's claim for grant of disability pension was rejected by the Competent Authority vide letter no. PEN/600/D/LRDO/1:07/2019/138436B dated 21.02.2019 and he was advised to prefer an appeal against the rejection within 06 months from the date of receipt of the rejection letter.

4. The applicant preferred a First Appeal dated 12.03.2019 which was rejected vide Dte of Pay & Allowances, IHQ of MOD(Navy) letter dated 02 June 2020 stating to the effect:-

*"After due examination of your first appeal dated 12 Mar 19 for grant of disability pension for the **ID Seizure Disorder, ICD No. G 40.0**, in the light of relevant rules and administrative/medical provisions, it has been decided by the Appellate Committee on First Appeals (ACFA) that you are not entitled to Disability Pension."*

with an advice to the applicant to prefer a second appeal within six months. Apparently, the first appeal of the applicant dated 12.03.2019 which has been disposed of on 02.06.2020 was not disposed of within a period of six months from the date of filing of the same nor till the institution of the present OA on 09.10.2019 and thus we consider it appropriate to take up the OA for consideration in terms of Section 21 (2) (b) of the AFT Act 2007.

CONTENTIONS OF THE PARTIES

5. The applicant submits that he joined the Indian Navy on 28.01.2004 in a fit medical category and was discharged from service in low medical category on 31.01.2019 after 15 years and 04 days of qualifying service which is not refuted by the respondents. It has thus been submitted by the applicant that he having joined the Indian Navy in a fit medical condition, the disability that he suffered from of **“Seizure Disorder ICD No. G 40.0”** on 08.02.2015 after 11 years of service which arose during his tenure in the Indian Navy has to be held to be attributable to and aggravated by Military Service.

6. Inter alia the applicant submits that he was deputed as an Electrical Sailor with no defined working hours in as much as an electrical sailor has to attend defects of rectification at any time. The applicant has further submitted that he has lived onboard ships away from his family which has caused him emotional stress. Inter alia the applicant places reliance on the

Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 1982 to contend to the effect that in the absence of any note of any disability recorded on the records of the respondent qua the applicant, the disability that the applicant suffered from during service in the Indian Navy has to be held to be attributable to and aggravated by military service.

7. The applicant further placed reliance on his posting profile as reflected in Part II of the RMB dated 14.08.2018 which is to the effect:

S.no.	From	To	Place / Ship	P/F(HAA/Ops/ Sea service/others)	S.no.	From	To	Place / Ship	P/F(HAA/Ops/ Sea service/others)
1	28.01.04	13.07.04	INS CHILKA	P	2	14.07.04	14.05.05	CR VALSURA	P
3	15.05.05	01.06.08	INS JAMUNA	F	4	02.06.08	24.05.10	INS VIKRANT	P
5	25.05.10	12.04.13	INS GANGA	F	6	13.04.13	04.05.15	INS VALSURA	P
7	05.05.15	TILL DATE	INSMA (MBI)	P	8				

The onset of the disability as reflected in the said RMB is to the effect:-

Illness, wound, injury	First started		Rank of Indl	Where treated	Approximate dates and periods treated
	Date	Place			
SEIZURE DISORDER, ICD NO G 40.0	08 FEB 15	AGRA (ON LEAVE)	LEMP	MH AGRA / CH LUCKNOW	TILL DATE

8. The applicant has further submitted to the effect that the disability of the applicant had its onset on 08.02.2015 whilst the applicant was

posted at INS Valsura, but for the periods 15.05.2005 to 01.06.2008 and 25.05.2010 to 12.04.2013 he had been posted on board INS Jamuna and INS Ganga, respectively for more than three years during each of these field postings i.e. for a period of more than six years of field postings before the onset of the disability of “**Seizure Disorder ICD No. G 40.0**” on 08.02.2015 within less than two years of his field hosting on board INS Ganga from 25.05.2010 to 12.04.2013.

9. The applicant thus submits that the opinion put forth by the Release Medical Board in Part V thereof to the effect:-

“

<i>Disability</i>	<i>Attributable to service (Y/N)</i>	<i>Aggravated by service (Y/N)</i>	<i>Not Connected with service (Y/N)</i>	<i>Reason / Cause / Specific Condition and period in service</i>
SEIZURE DISORDER, ICD NO G 40.0	N	N	Y	NEITHER ATTRIBUTABLE NOR AGGRAVATED BY SERVICE CONDITIONS VIDE PARA 33 CHAPTER VI OF GMO (2008).

”

opining that the disability of the applicant was neither attributable to nor aggravated by military service in terms of Para 33 of Chapter VI of the GMO (Military Pensions) 2008 is itself in violation of the spirit and contents of the said GMO.

10. The applicant has further submitted to the effect that the Summary and Opinion of the Classified Specialist Medicine and Neurologist dated

17.04.2018 indicates that there was no history of any myoclonic jerks, family history of epilepsy, nor any past history of head trauma encephalitic illness nor was there any substance abuse and that thus there were no contributory factors whatsoever from the side of the applicant for the arising of the disability. The percentage of disablement as reflected in the said RMB is as under:-

<i>Disability</i>	<i>Percentage of disablement</i>	<i>Composite assessment for all disabilities with duration (Max 100%)</i>	<i>Disability Qualifying for Disability Pension with duration</i>	<i>Net Assessment Qualifying for Disability Pension (Max 100% with duration)</i>
SEIZURE DISORDER, ICD NO G 40.0	20% (Twenty Percent)	20% (Twenty Percent) LIFE LONG	NIL	NIL

11. The applicant has further placed reliance on the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union of India and others*, 2013 STPL(Web) 498 SC (Civil Appeal No. 4949 of 2013 (Arising out of SLP(C) No. 6940 of 2010, decided on 02.07.2013) with specific reliance on the observations in Para 28 which are to the effect:-

"28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. 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. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above."

to contend that the disability in the instant case having arisen during service in the Indian Navy with there being no note of any disability on the records of the respondents at the time of induction of the applicant into the Naval Service, the same has to be held to be attributable to or aggravated by military service.

12. Likewise, reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *Union of India and another Vs. Rajbir Singh*, Civil Appeal No. 2904 of 2011, decided on 13.02.2015 wherein *Ex Hav Rajbir Singh* who suffered from Generalized Seizors and *Ex. Sgt. Suresh Kumar Sharma* who was suffering from the disability of Generalized Seizors were held entitled to the grant of disability pension. Likewise, reliance was also placed on behalf of the applicant on the verdicts of the Hon'ble Supreme Court in *Sukhvinder Singh Vs. Union of India and others*, 2014 STPL(Wed) 468 SC (Civil Appeal No. 5605 of 2010), decided on 25.06.2014 and *Union of India and others Vs. Angad Singh Titaria*, Civil Appeal No. 11208 of 2011, decided on 24.02.2015 to contend to similar effect.

13. The applicant has further submitted that in terms of Rule 423 of the Regulations for Medical Services of the Armed Forces Personnel 2010 itself, it is categorically stipulated to the effect that merely because disability had its onset in a peace area or a CIOPS area or field area or high altitude area, the same is not *per se* a ground to negate the aspect of attributability to a disability to military service and that the attributability thereof has to be ascertained in relation to the causal connection that the disability has with the military service. The applicant thus submits that in terms of Para 33 of the GMO (Military Pensions) 2008 itself on which the

Release Medical Board itself relies upon vide its opinion itself comes to the aid of the applicant.

14. On behalf of the respondents, it was submitted to the effect that the routine medical examination of personnel is conducted at the time of entry / induction into military service and that thus the possibilities of diseases which are congenital, hereditary, degenerative and constitutional in nature not being detected during the routine medical examinations cannot be overlooked. The respondents further submit that the onset of a disease during the service does not necessarily entail that it has to be treated as attributable to military service unless it is clearly established that the course of the disease was adversely affected due to factors related to conditions of military service.

ANALYSIS

15. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down in the Hon'ble Supreme Court in *Dharamvir Singh* (supra), a personnel of the Armed forces has to be presumed to have been inducted into military service in a fit condition, if there is no note or record at the time of entrance in relation to any disability in the event of his subsequently being discharged from service on medical grounds the disability has to be presumed to be due to service unless the contrary is established, - is no more *res integra*.

16. The 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008, which take effect from 01.01.2008 vide Paras 6, 7, 10, 11 thereof provide as under:-

"6. Causal connection:

For award of disability pension/special faraily pension, a causal connection between disability or death and military service has to be established by appropriate authorities.

7. 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 course 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. Altitudes etc."

(emphasis supplied),__

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.

17. It is essential to observe that Para 423(a) 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."

(emphasis supplied),__

and has not been obliterated.

18. It is essential to observe that vide para-33 on the verdict of the Hon'ble Supreme Court in *Dharamvir Singh* (Supra) it is laid down to the effect:-

"33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is 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 service/active service area or under normal peace conditions. "Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions."

(emphasis supplied)

19. Furthermore, Para 33 of Chapter VI of the GMO (Military Pensions) 2008 stipulates to the effect:-

"33. Epilepsy. This is a disease which may develop at any age without obvious discoverable cause. The persons who develop epilepsy while serving in forces are commonly adolescents with or without ascertainable family history of disease. The onset of epilepsy does not exclude constitutional idiopathic type of epilepsy but possibility of organic lesion of the brain associated with cerebral trauma, infections (meningitis, cysticercus, encephalitis, TB) cerebral anoxia in relation to service in HAA, cerebral infarction and hemorrhage, and certain metabolic (diabetes) and demyelinating disease should be kept in mind.

The factors which may trigger the seizures are sleep deprivation, emotional stress, physical and mental exhaustion, infection and pyrexia and loud noise. Acceptance is on the basis of attributability if the cause is infection, service related trauma.

Epilepsy can develop after time lag/latent period of 7 years from the exposure to offending agent (Trauma, Infection, TB). This factor should be borne in mind before rejecting epilepsy cases.

Where evidence exists that a person while on active service such as participation in battles, warlike front line operation, bombing, siege, jungle war-fare training or intensive military training with troops, service in HAA, strenuous operational duties in aid of civil power, LRP on mountains, high altitude flying, prolonged afloat service and deep sea diving, service in sub-marine, entitlement of aggravation will be appropriate if the attack takes place while serving in those areas."

(emphasis supplied)

20. It is essential to observe that the applicant in the instant case was posted on board INS Jamuna from 15.05.2005 to 01.06.2008 and on board INS Ganga from 25.05.2010 to 12.04.2013 for more than three years during each of these field postings i.e. for a period of more than six years of field postings before the onset of the disability of **"Seizure Disorder ICD No. G 40.0"** on 08.02.2015 within less than two years of his field posting on board INS Ganga from 25.05.2010 to 12.04.2013 as already observed here in above in Para 8 and thus apparently in the instant case the attributability of the disability being due to the latency of the disability due to the exposure to the offending agent, that is the trauma of being on board ships for the periods 15.05.2005 to 01.06.2008 and 25.05.2010 to 12.04.2013 has to be taken into account. In these circumstances, the aspect of the seizures, having been triggered by sleep deprivation and mental exhaustion, cannot be overlooked. Furthermore,

as has been rightly contended on behalf of the applicant, the clinical history for the applicant does not reflect any contributory factor from the side of the applicant for the arising of the disability.

21. On a consideration of the submissions made on behalf of either side, it has to be observed that as laid down by the Hon'ble Supreme Court in *Ex Cfn Narsingh Yadav vs UOI & Ors*, in Civil Appeal No. 7672/2019 vide observations in Para 18 thereof, each case has to be examined whether the duties assigned to the individual may have led to stress and strain leading to the disability.

22. As regards the contention raised by the respondents that the disability of seizures could not have been detected prior to the induction of the applicant into the Indian Navy, it cannot be overlooked as held by the Hon'ble Supreme Court in *Union of India vs Rajbir Singh* (supra) vide para 12 thereof to the effect:-

"12. Reference may also be made at this stage to the guidelines set out in Chapter-II of the Guide to Medical Officers (Military Pensions), 2002 which set out the "Entitlement: General Principles", and the approach to be adopted in such cases. Paras 7, 8 and 9 of the said guidelines reads as under:

"7. Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be

that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorisation of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination."

(emphasis supplied)

23. The applicant's disability is held to be attributable to military service in terms of Para 33 of the GMO (Military Pensions) 2008 as the probability of the latency of the disability being due to service in the Indian Navy and being posted on board ships for more than 06 years prior to the onset of the disability in existence cannot be overlooked in the facts and circumstances of the instant case

CONCLUSION

24. In the circumstances, the **OA 1710/2019** is allowed and the applicant is held entitled to the grant of the disability element of pension qua the disability of the applicant i.e. "**Seizure Disorder ICD No. G 40.0**" assessed at 20% for life, which is directed to be broad banded to 50% for life in terms of the verdict of the Hon'ble Supreme Court in **Union of India vs Ram Avtar** decided on 10.12.2014 in Civil Appeal no. 418 of 2012 with effect from the date of his discharge and the respondents

are directed to issue the corrigendum PPO with directions to the respondents to pay the arrears within a period of three months from the date of receipt of a copy of this order, *failing which*, the respondents would be liable to pay interest @6% p.a. on the arrears due from the date of this order.

25. No order as to costs.

Pronounced in the Open Court on the 22 day of December, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/AP/