

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

B.

OA 1918/2019

Ex Sub Narendra Bahadur Chhetri Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. VS Kadian, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM

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

ORDER
03.10.2023

Vide our detailed order of even date, we have allowed the OA 1918/2019. 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)

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 1918/2019 with MA 1421/2023 & 2802/2019

Ex Sub Narendra Bahadur Chhetri

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Praveen Kumar, proxy for
Mr. V S Kadian, Advocate

For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM :

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

ORDER

MA 2802/2019

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 1070 days in filing the present OA. Learned counsel for the respondents fairly does not oppose the prayer made on behalf of applicant. 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 2802/2019 is allowed and the delay of 1070 days in filing the OA 1918/2019 is thus condoned. The MA disposed of accordingly.

MA 1421/2023

This is an application filed on behalf of the respondents for condonation of delay of 15 days in filing the counter affidavit. In view of the reasons explained in MA 1421/2023 and in the interest of justice, the MA 1421/2023 is allowed and the delay of 15 days in filing the counter affidavit is condoned.

OA 1918/2019

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) ***Direct respondents to treat the disability Essential Hypertension assessed @ 30% of the applicant as attributable to/ aggravated by military service as considered by the Release Medical Board and grant disability element of pension from the date of retirement of the***

applicant along with benefit of broad banding.

- (b) 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.***
- (c) Any other relief which the Hon;ble Tribunal may deem fit and proper in the fact and circumstances of the case.***

2. At the outset, it is essential to observe that the First Appeal Cum legal notice dated 01.02.2019 filed by the applicant against the rejection of the grant of the disability pension was not adjudicated by the respondents till institution of the present OA dated 09.10.2019.

Prior to the appeal/legal notice dated 01.02.2019, a legal notice dated 25.09.2018 was sent by the applicant to the respondents seeking the grant of disability pension. As per the counter affidavit dated 21.03.2023 filed by the respondents, it was averred to the effect:-

“That it is humbly submitted that the appeal cum legal notice No. VSK.343.09.2018 dated 25.09.2018 was received by this office under Records office Indian Embassy Kathmandu (Nepal) letter no 1260/Misc/9GR dated 01.11.2018 and this office letter No. JC-211414/9GR/DP dated 17.11.2018 under which requisite documents were asked for processing of appeal. Another Appeal cum legal notice No VKS/19/02/2019 dated 01.02.2019 was received from Record Office Indian Embassy Kathmandu (Nepal) vide their letter No. 1251/Misc/9GR dated 15.03.2019. Subsequently, this office has again asked the pensioner to submit requisite documents for further necessary action vide this office letter No. JC-211414/9GR/DP dated 23.03.2019.”

3. Vide proceedings dated 25.05.2023 in the present OA, it was directed as under:-

“During the course of submissions made on behalf of the respondents, it is submitted to the effect that the document at Annexure R-8 to the counter affidavit has not been responded to on behalf of the applicant. The document as detailed therein in Para 2 be supplied by the applicant to the counsel for the respondents within a period of ten days with signature of receipt of the same and the appeal that has been made by the applicant dated 25.09.2018 be disposed of by the respondents within a period of ten days from the receipt of the documents supplied by the applicant. Re-list the matter for final hearing on 30.08.2023.”

4. Vide order dated 31.08.2023 in the present OA, it was directed as under:-

“2. On behalf of the applicant it has been submitted that the documents as detailed in para 2 referred to with annexure A8 to the counter affidavit have been supplied by the applicant on 12.07.2023 vide letter dated 11.07.2023 of the counsel of the applicant. Despite the same, the respondents have not disposed of the appeal dated 25.09.2018 of the applicant which he disposed of within a period of 15 days where after no further opportunity shall be given.

3. The original RMB proceedings be also produced by the respondents on the next date of hearing.

4. Re-list the matter for final hearing on 21.09.2023.”

5. The proceedings of the order dated 21.09.2023 in the instant OA are to the effect:-

“On behalf of the respondents, a copy of letter dated 04.09.2023 has been submitted requesting the competent authority to accord sanction for holding first appeal medical board against rejection of disability pension at the earliest in relation to disability being attributable to military service. On behalf of the respondents, it has thus been submitted that the first appeal filed by the applicant is still pending.

2. Qua directions dated 25.05.2023 whereby 10 days' time was granted to the applicant to supply documents as detailed in para 2 responded to in Annexure R-8 to the counter affidavit of the respondents, the learned counsel for the applicant submits that the said documents as

sought by the respondents have been supplied to the respondents and have been received by the respondents on 12.07.2023 and a copy of the receipted letter dated 11.07.2023 on behalf of the applicant to the effect is taken on record. Taking into account the factum that vide order dated 31.08.2023, 15 days' more time was granted to the respondents for disposal of the said appeal which has not been disposed of till date by the respondents, we consider it appropriate and essential to take up the OA for consideration.

3. Heard.

4. The original RMB proceedings have been produced by the respondents which are taken on record till pronouncement of the order.

5. Order reserved."

The above reflects the sad situation in the disposal of representation/notice/appeal filed by military personnel by the respondents and the lackadaisical compliance of directions of this Tribunal by the respondents. As observed vide order dated 21.09.2023, we have thus taken up this OA 1918/2019 for consideration, in terms of Section 21(1) and Section 21(2) (b) of the Armed Forces Tribunal Act 2007 for consideration.

6. The applicant is found to be suffering from "Essential Hypertension". The applicant submits that for the purpose of

'Essential Hypertension, the disability has been assessed @ 30% as is evident from the medical records.

7. The consistent view taken by this Tribunal is based on the law laid down by the Hon'ble Supreme Court in the case of **Dharamvir Singh vs. Union of India and others** (2013) 7 SCC 316, the Entitlement Rules for Casualty Pensionary Awards, 1982, and observations in para-28 of the said verdict 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."

Further as per amendment to Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008 at para-43, it is provided as under:-

"43. Hypertension - The first consideration should be to determine whether the hypertension is primary or secondary. If (e.g. Nephritis), and it is unnecessary to notify hypertension separately.

As in the case of atherosclerosis, entitlement of attributability is never appropriate, but where disablement for essential hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. However, in certain cases the disease has been reported after long and frequent spells of service in field/HAA/active operational area. Such cases can be explained by variable response exhibited by different individuals to stressful situations. Primary hypertension will be considered aggravated if it occurs while serving in Field areas, HAA, CIOPS areas or prolonged afloat service."

8. 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.

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

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 contacted 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.

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 supplied),__

has not been obliterated.

10. The applicant served in the Indian Army for 28 years. The onset of the disability occurred in January 1989, after 16 years of long service. He has served in the Army at various places in different environmental and service conditions in his prolonged service career. The RMB dated 04 August 2001 has conceded the disability as aggravated by military service and in Part III-Opinion of the Medical Board of the RMB proceedings, the reason for considering the disability of the applicant as aggravated by military service is given as **‘due to**

stress and strain of service'. It has therefore fulfilled the twin conditions of Para 173 of the Pension Regulations for the Army 1961, for grant of disability pension. Moreover, the Hon'ble Supreme Court, in the case of **Ex Sapper Mohinder Singh Vs. Union of India & Ors.** (Civil Appeal No. 104/1993) decided on 14.01.1993, which has been followed in large number of orders by the Tribunal, has held that without physical medical examination of the individual, the administrative authority /higher formation cannot overrule the opinion of the medical board.

11. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension in respect of the disability 'Essential Hypertension. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 30% rounded off to 50% for life with effect from the date of his discharge in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India Vs.**

Ram Avtar (Civil Appeal No. 418/2012), decided on 10.12.2014.

12. 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.

13. The original records produced by the respondents be retained by the Tribunal Officer.

Pronounced in the open Court on this day of 3rd October, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

Pooja