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

D..

OA 2067/2018 with MA 2274/2018

Ex ERA-5 Manoj Kumar Singh ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT. GEN. P.M. HARIZ, MEMBER (A)

ORDER
19.12.2023

Vide our detailed order of even date, we have allowed the main OA No. 2067/2018. Faced with this situation, learned counsel for the respondent makes an oral prayer for grant of leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the respondent and going through 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, therefore prayer for grant of leave to appeal stands dismissed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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

O.A. No. 2067 of 2018

With

M.A. No. 2274 of 2018

In the matter of :

Ex ERA-5 Manoj Kumar Singh ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Ved Prakash and Shri Devendra Kumar, Advocates

For Respondents : Shri Arvind Patel, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

O R D E R

M.A. No. 2274 of 2018 :

Vide this application, the applicant seeks condonation of 8637 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.

O.A. No. 2067 of 2018 :

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, who is aggrieved by the impugned order dated 28.05.1996 vide which the applicant's claim for disability pension was rejected.

2. Brief facts of the case are that the applicant was enrolled in the Indian Navy on 14.07.1992 and was invalided out from service in low medical category S5A5 (Phy) Pmt with effect from 28.03.1995. The Invaliding Medical Board (IMB) held in February, 1995 assessed the applicant's disabilities i.e. (1) SEIZURE DISORDER @ 20% and (2) ESSENTIAL HYPERTENSION @ 20% with composite assessment @ 40% for two years. While the disability (2) was held as 'aggravated by service', first disability was held as 'neither attributable to nor aggravated by service'. The applicant's initial claim for disability pension was forwarded to the PCDA(P), Allahabad, which rejected his disability claim vide letter dated 22.11.1996. The decision was communicated to the applicant vide letter dated 13.06.1996. However, the applicant did not prefer any appeal and it is only in the year

2018, the applicant sent a legal notice-cum-representation dated 12.02.2018 seeking the relief, which, as per the applicant, was not responded to by the respondents. Hence, the present OA.

3. Learned counsel for the applicant submitted that the applicant at the time of enrolment was fully fit medically and physically and no note was made in his medical documents. He further submitted that in the year 1992, when the disability of Seizure Disorder was detected, the applicant was posted onboard INS Kuthar i.e. field area. Even after that, the applicant was in active service and served onboard INS Kuthar and INS Viraat upto August, 1994, which led to aggravation of the disease. Thereafter, the applicant was diagnosed with the second disability i.e. Essential Hypertension, in December, 1994. The applicant was downgraded medically and ultimately he was invalided out from service on 28.03.1995 in low medical category i.e. S5A5(Phy) Pmt. He further submitted that the disability pension claim was duly recommended but the same was rejected by PCDA vide letter dated 28.05.1996. He referred to Para 101 and 107 of the Indian Navy (Pension) Rules, 1964

(Annexure A-4), which stipulate that unless otherwise specifically provided, a disability pension may be granted to a person who is invalided out from service on account of a disability which is attributable to or aggravated by service and assessed @ at 20% or more. In support of his contentions, learned counsel relied upon the judgments of the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors. (2013) 7 SCC 316, Union of India and Ors. Vs. Rajbir Singh (2015) 12 SCC 264, Ex Sapper Mohinder Singh Vs. Union of India and Another [Civil Appeal No. 164 of 1993 (arising out of SLP No. 4233 of 1992)]*** decided on 15.01.1993 and ***Sukhvinder Singh Vs. Union of India and Ors. [2014 STPL (WEB) 468 SC]***, wherein it was held that whenever a member of the armed forces is invalided out of service, it is to be assumed that his disability was to be considered as more than 20% and the same would attract the grant of fifty percent of disability pension.

5. Learned counsel for the respondents, on the other hand, submitted that the applicant's claim for disability pension was forwarded to the PCDA(P) Allahabad, which

rejected the said claim vide letter dated 22.11.1996. He further contended that the OA is highly belated as the applicant did not file any appeal against this rejection and after about 23 years, he has preferred the present OA. Hence, learned counsel prayed that the OA may be dismissed.

6. We have heard the learned counsel for the parties and have perused the record.

7. With regard to the first disability suffered by the applicant i.e. Seizure Disorder, we may refer to Para 33 of the Guide to Medical Officers (GMO) (Military Pensions) 2002, amendment 2008, which stipulates the conditions for assessing attributability of disease 'Epilepsy' and is reproduced as hereunder :

> ***"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 infraction 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 submarine, entitlement of attributability will be appropriate if the attack takes place within 6 months. Where the genetic factor is predominant and attack occurs after 6 months, possibility of aggravation may be considered."

9. From the aforesaid, it can be made out that the disease in question may develop at any age without obvious discoverable cause and the persons who develop the disease while serving in forces are with or without ascertainable family history of disease and if the attack of disease takes place within six months of the active service such as participation in battles, warlike front line operation, bombing, intensive military training with troops, service in HAA, high altitude flying, prolonged afloat service, deep sea diving etc., attributability can be assessed. In the present case, no such service conditions are shown to have performed by the applicant within the stipulated time of the onset of disease, which occurred after just three years of joining the naval service. In view of the facts and

circumstances above, there being no causal connection of the disability with the service, the same cannot be held either attributable to or aggravated by service.

10. Furthermore, the law on the importance of the opinion of a medical board has been well settled by the Hon'ble Supreme Court. While pronouncing judgment in the case of ***Union of India & Another Vs. Ex Rfn Ravinder Kumar [Civil Appeal No. 1837/2009]***, the Hon'ble Apex Court vide its order dated 23.05.2012 had stated that opinion of Medical Board that ID Generalised Tonic Seizure, MA opined that ID is genetic in origin, not connected with service, should not be over-ruled judiciously unless there is a very strong medical evident to do so. Relevant part of the above judgment reads as under :

> ***"Opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension brushing aside the opinion of Medical Authorities, record the specific finding to the effect that the disability was neither attributable to nor aggravated by military service, the court should not ignore a finding for the reason that Medical Board is specialized authority composed of expert medical doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability due to military service and the conditions of service resulting in disablement of the individual."***
>
> ***5. We are of the view that the opinion of the Medical Board which is an expert body must be given due weight, value and credence. Person claiming disability pension must establish that the injury***

> ***suffered by him bears a causal connection with military service.***
> ***6. In the instant case, the Medical Board has opined as under :***
> > ***"ID Generalised Tonic Seizure. MA opined that ID is genetic in origin, not connected with service.***
> ***Thus, in view of the above, it is evident that the ailment with which respondent has been suffering from is neither aggravated not attributable to the Army Service."***

11. The Hon'ble Supreme Court in the case of ***Ex Cfn Narsingh Yadav Vs. Union of India & Ors. [(2019) 9 SCC 667]***, held as under :

> ***"Though, the provision of grant of disability pension is a beneficial provision but, mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that Schizophrenia is presumed to be attributed to or aggravated by military service.***

Further, the Hon'ble Supreme Court ruling amplifies that mental disorder, which cannot be medically detected during the enrolment process cannot be claimed to be attributable to rigours of service at a later stage, relevant part of the judgment reads as under :

> ***".....Relapsing forms of mental disorders which have intervals of normality, unless adequate history is given at the time by the member. The Entitlement Rules itself provide that certain diseases ordinarily escape detection including Epilepsy and Mental Disorder, therefore, we are unable to agree that mere fact that Schizophrenia, a mental disorder was not noticed at the time of enrolment will lead to presumption that the disease was aggravated or attributable to military service."***

12. The Hon'ble Supreme Court in the case of ***Union of India Vs. Ex. Sep. R. Munusamy [2022 SCC OnLine SC 892]*** held that :

> ***"25. ...what exactly is the reason for a disability or ailment may not be possible for anyone to establish. Many ailments may not be detectable at the time of medical check-up, particularly where symptoms occur at intervals. Reliance would necessarily have to be placed on expert medical opinion based on an in depth study of the cause and nature of an ailment/disability including the symptoms thereof, the conditions of service to which the soldier was exposed."***

13. As for the second disability i.e. Essential Hypertension, the IMB has assessed the same as 'aggravated due to stress and strain of service' as is evident from the IMB proceedings i.e. Part-III Opinion of the Medical Board. However, PCDA has overruled the opinion of the IMB failed to consider this aspect while denying the disability pension to the applicant. The issue in question is no more *res integra.* The same is squarely covered by the decision of the Hon'ble Supreme Court in the case of ***Ex Sapper Mohinder Singh Vs. Union of India & Ors. [Civil Appeal No. 104 of 1993]*** decided on 14.01.1993, wherein the Hon'ble Supreme Court has observed that without physical medical examination of the patient, the administrative authority cannot sit over the opinion of a medical board. The observations made in the

judgment in the case of *Ex Sapper Mohinder Singh (supra)* being relevant is quoted below :

> ***"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core."***

14. In view of the decision of the Hon'ble Supreme Court in *Ex Sapper Mohinder Singh (Supra),* we are of the considered view that the claim for disability pension was wrongly interfered with by the administrative authority and is unsustainable in law. As per the findings of IMB, the applicant's disability i.e. Essential Hypertension' was held aggravated by military service and, therefore, he is to be held entitled for disability pension for this disability.

12. Further, the Tribunal has taken a consistent view that the disability of hypertension is considered attributable to/aggravated by military service conditions in view of 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]***, which has been followed in subsequent decisions of the Hon'ble Supreme Court and in the number of orders passed by the Tribunal, wherein the Apex Court had considered the question with regard to payment 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, 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 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. Relevant paras are reproduced hereunder :

"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."

In light of the above discussion, we find that the denial of the disability pension to the applicant is unsustainable in law and we hold that the applicant is entitled to disability pension for 'Essential Hypertension'.

Furthermore, with regard to the disability of the applicant assessed for two years, we may refer to the judgment of Hon'ble Supreme Court in the case of ***Commander Rakesh Pande Vs. Union of India & Ors.*** ***[Civil Appeal No. 5970 of 2019]*** decided on 28.11.2019, wherein the Hon'ble Apex Court while upholding the decision of the Armed Forces Tribunal granting disability pension for five years to the applicant, granted the disability for life and observed as under :

> ***"Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual himself requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @ 50% for life.***
>
> ***[Emphasis supplied]***

15. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability pension for the disability 'Essential Hypertension'. The respondents are directed to grant disability element of pension to the applicant @ 20% from the date of invalidment i.e. 28.03.1995, which be rounded off to 50% for life with effect from 01.01.1996 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. However, as the applicant has approached the Tribunal after a considerable delay, in view of the law laid down in *Tarsem Singh's case (supra),* arrears will be restricted to three years prior to the date of filing of this OA i.e. 12.12.2018.

16. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order, *failing which,* the applicant shall be entitled to interest @ 6% per annum till the date of payment.

17. In view of the above, pending MAs, if any, stand closed. There is no order as to costs.

Pronounced in open Court on this 19th day of December, 2023.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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