

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

A.

OA 31/2019 with MA 2958/2019

Ex Hav Rajesh Kumar Applicant
VERSUS Respondents
Union of India and Ors.

For Applicant : Mr. J P Sharma, Advocate
For Respondents : Gp. Capt Karan Singh Bhati, Sr CGSC
CORAM

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

ORDER
13.12.2023

Vide our detailed order of even date we have allowed the OA 31/2019. 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 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, the 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

MA 2958/2019

This is an application filed on behalf of the respondents for condonation of delay of 22 days in filing the counter affidavit. In view of the reasons explained and in the interest of justice, the delay in filing the counter affidavit is condoned. The MA is disposed of accordingly.

OA 31/2019

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

“(a) To quash and set aside the impugned order dated 01.02.2018 as Annexure a-1 Impugned order.

(b) Direct respondents to grant disability element of pension to the applicant by treating his disability ‘Diabetes Mellitus Type-II’ as attributable to aggravated by military service as assessed as @20% for life as it has caused due to stress and strain of service as law already

settled by the Hon'ble Supreme Court various cases in Dharamvir Singh Vs UOI & Ors (2013) 7SCC 316, latest of UOI & Ors Vs. Rajbir Singh (CA No. 2904 of 2011 decided on 13.02.2015, And/or.

(c) Direct respondents to grant disability element of pension @ 20% and further benefit of rounding off of disability element of pension @ 20% to 50% wef 01.01.2018 for life in terms of UoI & Ors. Vs. Ram Avtar in CA 418/2012 decided on 10.12.2014 alongwith full arrears with 10% an interest.

(d) Issue any other appropriate order or direction which this Hon'ble Tribunal may be deem fit and proper in facts and circumstances of the case."

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 02.12.1991 and discharged from service on 31.12.2017 under the Army Rule 13(3) Item III(i) on completion of service limit/age limit in low medical category S1H1AP2E1 (Permanent) for the disability "Type-II Diabetes Mellitus" after rendering 26 years and 39 days of regular service. The Release Medical Board dated 03.10.2017 held that the applicant was fit to be released from service in low medical category S1H1A1P2E1 (Permanent) for the disability of Diabetes Mellitus Type-II assessed @ 20% for life while the qualifying element for disability was recorded as NIL for life on account of the disability being treated as neither attributable to nor aggravated by military service.

3. On adjudication, the competent authority rejected the disability pension claim and communicated to the Air Veteran vide letter no P/15377008/DP-1/Rejection/NER dated 09.08.2018 with an advice that

the applicant may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. However, the applicant did not prefer any appeal as advised to him by the Signals Records within the stipulated time frame but the applicant has served a legal notice dated 14.10.2018 through his counsel for grant of disability pension, which was received by the respondents on 22.10.2018 and suitably replied to by the Signals Records vide letter no P/1577008/DP-4/NER dated 01.12.2018. . Aggrieved by the response of the respondents, the applicant has filed the present OA. In the interest of justice thus, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT, Act 2007.

CONTENTION OF THE PARTIES

4. Placing reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]*, the learned counsel for the applicant submitted that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Army at various places in different environmental and service conditions in his prolonged service and thus thereby, any disability at the time of his service has to be deemed to be attributable to or aggravated by military service.

5. The learned counsel for the applicant also placed reliance on the verdicts of the Hon'ble Supreme Court in the case of Civil Appeal

No 2904/2011 titled as *UOI & Anr Vs. Rajbir Singh* decided on 13.02.2015, *Ex. Power Satyaveer Singh Vs Union Of India* (Civil Appeal No. 7368 of 2011) and Civil Appeal No 418/2012 titled *Union of India & Ors. vs. Ram Avtar* Dated 10.12.2014.

6. Per contra, the learned counsel for the respondents submitted that the RMB as well as the Competent Authority have assessed the disability of the applicant as neither attributable to nor aggravated by military service as the onset of the disability occurred in peace station and there is no causal connection between the disability and the military service and hence the applicant is not entitled for grant of disability element of pension in terms of Rule 53(a) of Pension Regulation for the Army 2008, (Part-I).

ANALYSIS

7. 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 disability of the applicant was assessed to be 20% which is the bare minimum assessment of 20% for the grant of disability pension. The only question that arises is whether the disability of Diabetes Mellitus Type-2 suffered by the applicant is attributable to or aggravated by military service.

8. The issue of attributability of the disease is no longer *res integra* in view of the verdict of the Hon'ble Apex Court in *Dharamvir Singh v.*

Union of India (supra), wherein it is clearly spelt out that any disease contracted during service is presumed to be attributable to military service, if there is no record of any ailment at the time of commission into the Military Service.

9. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of medical disease/disability, - the disability must be presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by air force service. Furthermore, Regulation 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),__*

has not been obliterated.

10. Furthermore, Para 26, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008 reads 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 diabetes results from severe and acute destruction of Beta cells of pancreas by autoimmunity brought about by various infections including viruses and other environmental toxins in the background of genetic susceptibility. Type 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 results from acute beta cell destruction by immunological injury resulting from the interaction of certain acute viral infections and genetic beta cell susceptibility. If such a relationship from clinical presentation is forthcoming, then Type 1 Diabetes mellitus should be made attributable to service. 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."

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

Thus, the ratio of the verdicts in *Dharamvir Singh vs UOI &Ors* (Civil Appeal No. 4949/2013) (2013) 7 SCC 316, *Sukhvinder Singh vs UOI &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.

12. It is also essential to observe that vide the verdict of the Hon'ble Supreme Court in Civil Appeal no. 5970/2019 titled as *Commander Rakesh Pande vs UOI & Ors.*, dated on 28.11.2019, wherein the applicant thereof was suffering from **Non-Insulin Dependent Diabetes Mellitus(NIDDM)** and **Hyperlipidaemia**, the grant of disability pension for life @ 20% broad banded to 50% for life was upheld by the Hon'ble Supreme Court.

13. The applicant served in the Indian Army for 26 years and 28 days. The onset of the disability occurred in July 2013, after 22 years of long service. He has served in the Army at various places in different environmental and service conditions in his prolonged service career. During his entire career, the applicant was also posted in field areas for three tenures, where the life was full of stress and strain in performance of day to day duties apart from hostile climatic and environmental factors. The accumulated stress and strain of such a long service on the applicant cannot be overlooked.

14. Regarding broadbanding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in *Union of India vs. Ram Avtar*, Civil Appeal No. 418 of 2012 and connected cases, has observed

that individuals similarly placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

CONCLUSION

15. Therefore, in view of our analysis, the OA 31/2019 is allowed and the Respondents are directed to **grant benefit of disability element of pension @20% for life** (for DIABETES MELLITUS Type-2), rounded off to 50% for life in view of judgment of the Hon'ble Apex Court in *Union of India Vs. Ram Avtar (supra)* from the date of discharge i.e. 31.01.2020. The arrears shall be disbursed to the applicant within three months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

16. No order as to costs.

Pronounced in the open Court on 13 day of December, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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