

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

Suppl.
2.

OA 438/2019 with MA 1001/2019

Ex Nb/Sub Baij Nath Singh

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Praveen Kumar, Advocate

For Respondents : Mr. Arvind Patel, Advocate

CORAM

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

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
21.12.2023

Vide our detailed order of even date, we have allowed the OA 438/2019. 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)

(LT GEN C.P. MOHANTY)
MEMBER (A)

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ORDER

MA 1001/2019

This is an application filed under Section 22(2) of The Armed Forces Tribunal Act, 2007 seeking condonation of delay of 8961 days in filing the present OA. 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 1001/2019 is allowed despite opposition on behalf of the respondents and the delay of 8961 days in filing the OA 438/2019 is thus condoned. The MA is disposed of accordingly.

OA 438/2019

2. Invoking Section 14 of The Armed Forces Tribunal Act, 2007, the instant OA has been filed praying for the following prayers :-

(a) Direct respondents to grant Disability Pension@50% after rounding off the same from @ 20% as recommended by RMB for life to the applicant with effect from 01 Oct 1994 i.e. the date of discharge from service with interest @12% p.a. till final payment is made according to policy letter issued by Govt of India vide dated 31.01.2001 and judgement dated 10.12.2014 passed by Hon'ble Supreme Court of India in Bench of matter titled as Union of India & others Vs Ram Avtar in Civil Appeal 418/2012

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

3. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 04.09.1970 and retired from the Indian Army on 30.09.1994 after about 24 years and 27 days of qualifying service. During the Release Medical Board conducted on 21.04.1994 prior to his retirement, he was found to be suffering from the disabilities, namely ID (i) NIDDM @ 20% for five years (ii) Non Specific ECG Changes (V67) @NIL and his medical category was "BEE(P)". While his first disability was opined to be neither attributable to nor aggravated by military service (NANA), the second disability (b) Non Specific ECG Changes (V67) was held to be aggravated by military service.

4. The initial claim of the applicant for the grant of the disability pension was rejected by the Competent Authority vide letter No. G-3/56/22/2/95 dated 20.07.1995, and the outcome

of the same was communicated to the applicant vide letter No. Pen/D-9647/05/R dated 16.08.1995. Against the said rejection, the applicant preferred a first appeal dated 20.03.1999. The same was forwarded to Appellate Medical Authority vide letter No. 7(2698)/99/D(PenA & AC) dated 26 Jun 2001. The copy of the said letter was forwarded to the applicant vide BEG Roorkee letter No. Pen/D-JC- 197150/D/R dated 17 Sep 2018. Aggrieved by the repeated rejections, the applicant has approached this Tribunal. We consider it appropriate to take up the matter for consideration under Section 21(1) of the Armed Forces Tribunal Act, 2007.

5. Placing reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]*, learned counsel for the applicant argues 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 military service at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

6. Per Contra, Learned Counsel for the Respondents submits that under the provisions of para 173 of the Pension Regulations for Army, 1961, (Part-I), the primary condition for the grant of

disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by military service and is assessed @ 20% or more.

7. Relying on the aforesaid provision, learned counsel for the Respondents further submits that the aforesaid disability of NIDDM the applicant was assessed as "neither attributable to nor aggravated" by military service and not connected with the Air Force service and as such, his claim was rejected and thus, the applicant is not entitled to the grant of disability pension due to policy constraints.

8. On the careful perusal of the materials available on the record and also the submissions made on behalf of other side, we are of the considered view that it is not in dispute that the extent of disability was assessed to be above 20% which is the bare minimum for the grant of disability pension in terms of Para 81(a) of Pension Regulation for the Army, 2008 (Part-1). The only question that arises in the above backdrop is whether disability suffered by the applicant was attributable to or aggravated by military service and no reasons have been spelt out as to why the said disability could not be detected at the time of the conducting of the medical examination of the applicant before induction into the Army.

9. The issue of attributability of the disease is no longer *res integra* in view of the verdict of the Hon'ble Supreme 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.

10. It is also essential to observe that the prayer for the grant of the disability element of pension for the disability of "Diabetes Mellitus" in C.A. 7368/2011 in the case of *Ex. Power Satyaveer Singh* has been upheld by the Hon'ble Court vide the verdict in *UoI & Anr Vs. Rajbir Singh* (Civil Appeal 2904/2011) dated 13.02.2015.

11. It is essential to observe that in OA 1532/2016 titled *Cdr Rakesh Pande vs. UoI & Ors.*, vide order dated 06.02.2019 of the AFT (PB), New Delhi, the prayer made therein for the grant of disability element of pension in relation to the medical disability of NIDDM and 'hyperlipidemia' assessed at 20% for NIDDM and 6-10% of hyperlipidemia, composite 20% for a period of 5 years in view of the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs UoI & Ors* (Civil Appeal No. 4949/2013) and in *UoI & Ors. vs Rajbir Singh* (2015) 12 SCC 264, was upheld for a period of 5 years, which vide judgment of the Hon'ble Supreme Court in Civil Appeal No. 5970/2019 titled as *Commander Rakesh Pande vs UoI & Ors.*, dated 28.11.2019, was upheld for life, it being a disability of a permanent nature.

12. In the case of OA 1532/2016 titled as *Cdr Rakesh Pande vs UOI & Ors.*, the observations in relation to the grant of the disability element of pension as depicted in paras 8,9,10,11 and 12 thereof were upheld by the Hon'ble Supreme Court in *Commnader Rakesh Pande* (supra). The observations in paras 8,9,10,11 and 12 of the decision of the AFT(PB), New Delhi in OA 1532/2016 were to the effect:-

"8. On the merits of the case, the respondents submit that the medical disability NIDDM is considered as a metabolic disorder resulting from a diversity of aetiologies, both genetic and environmental, acting jointly. It is characterized by hyperglycemia and often associated with obesity and improper diet. Diabetes Mellitus Type 2, as per Para 26 of Amended Guide to Medical Officers (Medical Pensions) 2008 can be conceded as aggravated while serving in field, CI operations, high altitude areas and prolonged afloat service. However, the same is not relevant in the applicant's case as he was serving in shore duties in New Delhi, Mumbai and Goa prior to onset of the disease. As regards the disability Hyperlipidaemia, respondents submit that associated high cholesterol levels are also a result of metabolic disorder caused due to genetic causes or dietary indiscretion and there can be no service causes that can be considered responsible for predisposition and onset of the disability. Thus, respondents contend that the RMB was just and correct in assessing that the disability was neither attributable nor aggravated by military service.

9. Further, the respondents aver that the RMB had granted the medical disability only for five years and the same period has expired on 30.04.2006. The applicant made no effort whatsoever to present himself before a

Resurvey Medical Board after expiry of the medical disability period. Respondents contend that the contents of Govt. of India (MoD) Circular dated 07.02.2001 can, in no way, be taken to imply that the applicant's disability period would automatically be extended for life' even without reference to the medical authorities for reassessment of medical disability on conclusion of the said period.

Consideration:

10. Having given careful consideration to the arguments on both sides, we find that the basic issue before us is whether the applicant, a naval officer who contracted NIDDM and Hyperlipidaemia after about 17 years of service, and was assessed @ 20% composite for these two diseases for a period of 5 years by the RMB three years later, on his taking premature retirement, can be granted disability element of pension despite the fact that (a) the applicant has approached the respondents and the Tribunal about 15 years after his premature retirement from service, and (b) the RMB assessed his disabilities (composite @, 20% for five years) as neither attributable nor aggravated (NANA) by military service.

11. In the first instance, we have considered the delay of about 15 years by the applicant in forwarding his representation against non-grant of disability element of pension and filing his OA thereafter. We have examined the averments in M.A. No. 566 of 2019 explaining the delay and, in the interests of justice, condoned the delay, relying upon the judgment dated 13.08.2008 of the Hon'ble Supreme Court in the matter of Union of India Vs. Tarsem Singh (2009) (1) AISIJ 371.

12. With regard to the merits of the OA, we find that the applicant's case is squarely covered by the judgments in the case of Dharamvir Singh (supra) and Rajbir Singh (supra), whereby the Hon'ble Apex Court had observed to the effect that, unless cogent reasons are given to the contrary by the medical authorities, attributability or

aggravation will be conceded in cases where military personnel contract medical disabilities during the course of the service based on the ground that military personnel are put through thorough medical examination at the time of their entry into service, and are not enrolled or commissioned unless they are found fully fit medically."

(emphasis supplied)

13. Regarding broadbanding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in *Union of India v. 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).

14. 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 and 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 military service

15. Furthermore, the reliance placed on behalf of the respondent on the order dated 11.09.2023 in OA 121/2021 in

the case of *Ex Sub M Vijayakannan Vs UOI & Ors.*, is wholly misplaced in as much the said order as observed vide para 16 thereof reads to the effect:

"The Tribunal finds that not even an iota of evidence linking Military Service as a cause of attributability has been brought to the fore in this OA which gives us no leeway in considering a lenient view while deciding this case."

is on the basis of the facts of that case.

16. In the instant case, the onset of the disability of NIDDM was on 12.11.1991 after the applicant had been inducted into the military service on 11.09.1989 and after the posting of the applicant from 11.09.1989 to 09.05.1999 in the OP RAKSHAK (Nagrota). That stress and strain are causative preceptitative factors of NIDDM is spelt out through the prevalent GMOs vide Chapter VI of the GMO (MP) 2002 and 2008.

17. Therefore, in view of our analysis, the OA 438/2019 is allowed and Respondents are directed to *grant the benefit of disability element of pension @ 20% for life* (for "NIDDM @ 20% for life), *rounded off to 30% in view of judgment of Hon'ble Apex Court in Union of India versus Ram Avtar (supra) from the date of discharge i.e. 30.09.1994*. However, the arrears shall be restricted to commence to run from three years prior to the date of filing of this OA which is 11.3.2019. The arrears shall be disbursed to the applicant within three months of receipt of this order failing which shall earn interest @ 6% p.a. till the actual date of payment.

18. No order as to costs.

Pronounced in the open Court on 21st day of December, 2023.

(LT GEN C.P. MOHANTY)
MEMBER (A)

(JUSTICE ANU MALHOTRA)
MEMBER (J)

Priya Sharma

A

BEFORE THE ARMED FORCES TRIBUNAL

(PRINCIPAL BENCH) NEW DELHI

Original Application No. 438 of 2019

IN THE MATTER OF:

Ex -Nb/Sub Baij Nath Singh

...Applicant

(Ser No.197150-M)

Versus

Union of India & others

...Respondents

MEMO OF PARTIES

1. 197150-M, Ex -Nb/Sub Baij Nath Singh, ...Applicant
Aged about 66 years S/o Late Shri Mohar
Singh, R/o C-140, Block-C, New Ashok Nagar
Delhi-110096.

Versus

1. Union of India, Through it's Secretary ...Respondents
Ministry of Defence
South Block, New Delhi- 110 011
2. The Chief of the Army Staff
Army HQ (Sena Bhawan)
New Delhi- 110 011
3. The Officer-in-Charge
Records the BEG
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