

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

F.

OA 46/2019 WITH MA 424/2019

Lt Col V Raveendran Kutty (Retd.)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. J P Sharma, Advocate
For Respondents : Mr. K K Tyagi, Advocate

CORAM :

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

ORDER
26.09.2023

Vide our orders of even date, we have allowed the OA. Faced with the situation, learned counsel for the respondents makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007, to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[RAJENDRA MENON]
CHAIRPERSON

[P.M. HARIZ]
MEMBER (A)

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O.A. No. 46 of 2019
with
M.A. No. 424 of 2019

In the matter of :

Lt Col Raveendran Kutty (Retd.)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri J.P. Sharma, Advocate

For Respondents : Shri K.K. Tyagi, Advocate

CORAM :

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

ORDER

M.A. No. 424 of 2019 :

Vide this application, the applicant seeks condonation of 3649 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. 46 of 2019 :

The applicant, having been found medically and physically fit, was enrolled in the Indian Army on 10.10.1968 and later on commissioned on 22.07.1982. He was discharged from service on 31.01.2006 in low medical category. The RMB held the disability of the applicant i.e. Primary Hypertension' @ 30% for life and opined the same as 'neither attributable to nor aggravated by military service' (NANA), based on which, disability pension has been denied to the applicant. Initial claim for disability pension of the applicant was rejected vide letter dated 25.10.2007. Further, the applicant preferred the first appeal dated 10.01.2008. The Appellate Committee on First Appeal (ACFA), after examining the case, has decided to carry out Appeal Medical Board (AMB), which was held on 28.07.2008. The case was re-processed to ACFA, which rejected the disability pension claim as the disability was conceded as 'neither attributable to nor aggravated by military service'. Thereafter, the applicant served a legal notice-cum-representation dated 02.07.2018 which was replied to by the respondents vide letter dated 23.07.2018. Hence, this OA.

2. *Per contra*, learned counsel for the respondents controverts the arguments put forth on behalf of the applicant and contended that the applicant is not entitled to the relief claimed since the RMB, being an expert body, found the disability "Neither Attributable to Nor Aggravated by Military Service". He, therefore, prayed for dismissal of the OA.

3. As far as attributability/aggravation of the disability ID 'Primary Hypertension' is concerned, the consistent stand 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], 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."*

4. It has already been observed by the Tribunal in large number of cases that military services have their own pressure of rigorous military training and associated stress and strain of the service and that to say that there is no stress and strain of service should not be considered for the purpose of granting disability pension. It may also be taken into consideration that the most of the personnel of the armed forces, during their service, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. The Coordinate Bench of this Tribunal in the case of **Col R.R.**

Panigrahi Vs. Union of India & Ors. [O.A. No. 1825 of 2018]

decided on 01.08.2019 allowed the OA granting disability pension for hypertension on the similar grounds. There is no note made in his medical documents that he was suffering from any disease at the time of joining the service. We are, therefore, of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of above judgment and settled law on the point of attributability/aggravation, the disability of Primary Hypertension suffered by the applicant should be held attributable to/aggravated by the military service. As far as percentage of disability in question is concerned, in terms of Para 21 clause (f) of Chapter VII of the GMO, 2008 provides that uncomplicated primary hypertension has to be assessed @ 30%. Accordingly, the disability in the present case i.e. Primary Hypertension, falls with the ambit of Regulation 53 of the Pension Regulations for the Army, 1961 and fulfills twin conditions to be eligible for grant of disability pension of being held as attributable to/aggravated by service and assessed @ 20% or more.

5. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension for the disability 'Primary Hypertension'. Accordingly, we allow this application holding that the applicant is entitled to disability element of disability pension with regard to Primary Hypertension @ 30% for life rounded off to 50% for life 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. However, as the applicant has approached the Tribunal after some 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. 02.01.2019.

6. The respondents are thus directed to calculate, sanction and issue the necessary Corrigendum 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.

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

Pronounced in open Court on this 26 day of September, 2023.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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