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

O.A. No. 558 of 2017

In the matter of :

Ex Sep Bahadur Singh ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Shri A.K. Trivedi, Advocate

For Respondents : Shri V. Pattabhi Ram, Advocate

CORAM :

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

O R D E R

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, who is aggrieved by the finding of the Invaliding Medical Board treating his disability as neither attributable to nor aggravated by military service and rejection of his claim for grant of disability pension.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 03.05.1983 in medial category 'AYE' and was invalided out from service being in low medical category 'EEE' with effect from 13.02.1985 under Army Rule

13(3) Item III (iii). The Invaliding Medical Board held on 10.01.1985 assessed the applicant's disability i.e. GENERALISED EPILEPSY @ 15-19% for two years and the same was considered to be 'neither attributable to nor aggravated by military service'.

3. The applicant filed an application for supply of the Medical Board proceedings which were supplied to him by the respondents vide letter dated 08.04.2009. The applicant filed a representation dated 07.10.2014 and 31.12.2014 for grant of disability pension. The applicant received an order dated 05.02.2015 intimating that his first appeal had already been rejected by the govt. vide and earlier order dated 21.12.1992. Thereafter, the applicant preferred second appeal dated 08.03.2015 giving justification for the delay in filing the same and sought disability pension from the date of his invalidment. The applicant's second appeal was not forwarded by the Record Office was returned the same vide order dated 08.04.2016 on the ground of delay. Hence, this OA.

4. 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 to the effect that he was suffering from any disease at that time, and the onset of the disability occurred due to stress and strain of the military service. Learned counsel referred to the Pension Regulations which provides 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. He further referred to Regulation 423(c) of the Regulations for Medical Services for Armed Forces 1983, which provides that 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 of duty in armed forces contributed to the onset of the disease; Rule 7(b) stipulates that 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 individual's acceptance of military service.

5. 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, which has been considered and taken note of by the Hon'ble Apex Court in many of its judgments, wherein the Hon'ble Supreme Court had considered the question with regard to grant 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 and Para 423 of the Regulations for the Medical Services of the Armed Forces, 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 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.

6. Referring to relevant provisions of the Entitlement Rules for Causality Pensionary Awards, 1982, the learned

counsel for the applicant submitted that the applicant should have been given benefit of doubt and the disability should have been conceded aggravated by service only. He further relied upon a judgment of the Apex Court in ***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.

7. Learned counsel for the respondents, on the other hand, submitted that the applicant was not entitled to the relief claimed since the IMB, being an expert body, found the disability of the applicant as "Neither Attributable to Nor Aggravated by Military Service" for the reason that the disability existed before enrolment in the Army. Learned counsel contended that the applicant's claim for disability pension was forwarded to the PCDA(P) Allahabad, which rejected the said claim vide letter dated 09.05.1985. The applicant then preferred his first appeal on 22.08.1991, which was rejected by the respondents vide their letter dated

21.12.1992 and the second appeal was preferred only on 08.03.2016 i.e. after about 23 years' delay, and the same was not actioned being time-barred. Learned counsel submitted that as the applicant's disability does not fulfil the twin conditions in terms of Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I) of being held attributable to or aggravated by military service and assessed @ 20% or more, the applicant is not entitled to disability pension and, therefore, he prayed that the present OA be dismissed.

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

9. Para 33 of the Guide to Medical Officers (GMO) (Military Pensions) 2002, amendment 2008, stipulates the conditions for assessing attributability of 'Epilepsy' and is reproduced as hereunder :

> ***"33. <u>Epilepsy</u>***
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> ***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."

10. From the material placed on record, we find that the applicant was diagnosed with the disability in question after just 1½ years of enrolment and he was not still under any posting. There is no evidence on record to find even a remote causal link to any service related trauma which can be

considered to be a contributory factor to the mental condition of the applicant.

11. 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."***

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 military service.

12. 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."***
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> ***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.***
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> ***6. In the instant case, the Medical Board has opined as under :***
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> > ***"ID Generalised Tonic Seizure. MA opined that ID is genetic in origin, not connected with service.***
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> ***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. Moreover, the Hon'ble Supreme Court in the case of ***Ex Cfn Narsingh Yadav Vs. Union of India & Ors.*** ***[(2019) 9 SCC 667]***, held that there can be no mechanical application of principle that any disorder not mentioned at time of enrolment is presumed to be attributed or aggravated by military service. It also held that the scope of judicial review in the opinion of a medical board is limited, as the courts do not possess expertise to dispute the report unless there is strong medical evidence warranting it. 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.

12. Besides, the disability of the applicant was assessed by the IMB at less than 20% (15-19%) for two years. The Hon'ble Supreme Court in its judgement in ***Union of India & Ors. Vs. Wing Commander S.P. Rathore*** ***[Civil Appeal No. 10870/2018]*** decided on 11.12.2019, has held that the disability element is not admissible if the disability is less than 20%, and that the question of rounding off would not apply if the disability is less than 20%. If a person is not

entitled to the disability pension, there would be no question of rounding off. Relevant paras of the said judgment read as under :

> *"1. The short question involved in this appeal filed by the Union of India is whether disability pension is at all payable in case of an Air Force Officer who superannuated from service in the natural course and whose disability is less than 20%.*
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> *xxx xxx xxx*
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> *8. This Court in Ram Avtar (supra), while approving the judgment of the Armed Forces Tribunal only held that the principle of rounding off as envisaged in Para 7.2 referred to herein above would be applicable even to those who superannuated under Para 8.2. The Court did not deal with the issue of entitlement to disability pension under the Regulations of Para 8.2.*
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> *9. As pointed out above, both Regulation 37(a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off.*
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> *10. The Armed Forces Tribunal ('AFT'), in our opinion, put the cart before the horse. It applied the principles of rounding off without determining whether the petitioner/ applicant before it would be entitled to disability pension at all.*

> ***11.*** *In view of the provisions referred to above, we are clearly of the view that the original petitioner/applicant before the AFT is not entitled to disability pension. Therefore, the question of applying the provisions of Para 7.2 would not arise in his case. In this view of the matter, we set aside the order of the AFT and consequently, the original application filed by the Respondent before the AFT shall stand dismissed.*
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> *The appeal is allowed accordingly."*

13. Hon'ble Supreme Court in its judgement in ***Bachchan Prasad Vs. Union of India & Ors. [Civil Appeal No. 2259 of 2012]*** dated 04.09.2019 also held that an individual is not entitled to disability element if the disability is less than 20% as under :

> *"After examining the material on record and appreciating the submissions made on behalf of the parties, we are unable to agree with the submissions made by the learned Additional Solicitor General that the disability of the appellant is not attributable to Air Force Service. The appellant worked in the Air Force for a period of 30 years. He was working as a flight Engineer and was travelling on non pressurized aircrafts. Therefore, it cannot be said that his health problem is not attributable to Air Force service. However, we cannot find fault with the opinion of the Medical Board that the disability is less than 20%. The appellant is not entitled for disability element, as his disability is less than 20%."*

14. In the light of the above considerations, we conclude that since the disability of the applicant does not meet the eligibility criteria for being eligible for getting disability pension as the IMB assessed the disability at less than 20% (15-19%) and 'neither attributable to nor aggravated by military service', the applicant is not entitled to disability pension. Accordingly, finding no infirmity in the findings of the IMB, the OA stands dismissed.

15. There is no order as to costs.

Pronounced in open Court on this 20th day of October, 2023.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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