

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

D.

OA 612/2020

Ex Sea 1 (GS) Anand Kumar Pandey Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Niranjana Das. Advocate

CORAM

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

O R D E R
21.09.2023

Vide our detailed order of even date, we have allowed the OA 612/2020. 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)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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ORDER

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) Quash the impugned order no. PEN/600/D/LRDO I:07/2019/210641F dated 29.07.2019.*
(b) direct the respondents to grant disability element of pension to the applicant duly rounded off to 50% w.e.f. his date of discharge.
(c) Direct respondents to pay the due arrears of Pension with interest @12% p.a. from the date of retirement with all the consequential benefits.
(d) any other relief with the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.”

BRIEF FACTS

2. The applicant was enrolled in the Indian Navy on 29.07.2004 and was discharged from service on 31.07.2019 after completion of 15 years and 3 days of qualifying service. The Release Medical Board held on 28.02.2019 had assessed the disability of **Seizure Disorder** @20% for life while the net qualifying element for disability was recorded as 20% for life on account of the said disability being assessed as aggravated by military service. After concluding the proceedings of the said RMB, the same was sent to higher authority following the chain of command for approval and confirmation. However, the HQ Southern Naval Command vide letter reference no. MD/2270/9 dated 22.03.2019 returned the said RMB proceedings with an observation that there was mismatch with respect to the date of onset of the disability as noted in the specialist opinion and hence, the same be reconciled with the documentary evidence of illness. The fresh Release Medical Board in respect of the applicant was constituted at INHS NAVJIVANI, Ezhimala vide AFMSF-16 dated 15.05.2019 and placed the applicant in Low Medical Category S3A2 (P) PMT for the disability of **Seizure Disorder** and the disability was assessed @20% for life while the net qualifying element for disability was recorded as NIL for

life on account of the disability being neither attributable to nor aggravated by Naval service.

3. The claim for the grant of disability element of pension was preferred by the applicant but the same was rejected on account of the disability of applicant being assessed as NANA by the RMB and the same was communicated to the applicant vide letter No. PEN/600/D/LRDO I:07/2019/210641F dated 29.07.2019. Thereafter, the applicant preferred the first appeal dated 31.08.2019 against the rejection of the disability element of pension which was rejected vide IHQ MoD/DPA letter No. PN/0134/DP/1332/19 dated 06.08.2020. Aggrieved by the rejection of his claim for disability pension by the respondents, the applicant filed the instant OA. In the interest of justice thus, as the OA is pending since its institution on 10.07.2020, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT, Act 2007.

CONTENTIONS 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 Navy at various places in different environmental and service conditions in his prolonged service and thus thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service.

5. The learned counsel for the applicant placed reliance on the verdicts of the Hon'ble Supreme Court as under:-

- Civil Appeal No 5605/2010 titled *Sukhvinder Singh vs UOI* decided on 25.06.2014,
- Civil Appeal No. 2904/2011 titled *UOI vs. Rajbir* dated 13.02.2015,
- Civil Appeal No. 1498/2011 titled *Ex Sgt Suresh Kumar Sharma v. UOI*,
- *UOI & Ors vs. Angad Singh Titaria* (AIR 2015 SC 1898) CA No. 11208 dated 24.02.2015 and
- Civil Appeal No 418/2012 titled *UOI & Ors vs. Ram Avtar* dated 10.12.2014,

wherein simillary situated personnel were given relief.

6. Per contra, the learned counsel for the respondents submitted that as per Regulation 105-B of the Navy Pension Regulations, 1964, the primary conditions for the grant of disability pension are, "Unless otherwise

specifically provided, a disability pension may be granted to an individual who is invalided from the service on account of a disability which is attributable to or aggravated by Naval service and is assessed at 20% or over.” In other words, disability pension is granted to those who fulfill the following two criteria simultaneously:-

(i) Disability must be either attributable to or aggravated by service.

(ii) Degree of disablement should be assessed at 20% or more.

The learned counsel further submits that the RMB has assessed the applicant's disability as neither attributable to nor aggravated by service and that does not fulfill the criteria (i) as above and hence the applicant is not entitled to the grant of the disability pension in accordance with prevailing rules and policies.

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 the disability of the applicant of Seizure Disorder was assessed to be 20% which is the bare minimum for the grant of disability pension in terms of Regulation 105-B of the Navy Pension Regulations, 1964.

The only question that arises is whether disability suffered by the applicant was attributable to or aggravated by military service.

8. As per Part V, opinion of the Medical Board of the RMB dated 28.02.2019, the disability of the applicant i.e. Seizure Disorder was considered aggravated by military service with its onset being in May, 2006 whilst the applicant was posted onboard INS Akshay (afloat service). However, vide RMB dated 15.05.2019, the disability of the applicant was considered neither attributable to nor aggravated by military service with its onset being on 17.01.2019 whilst the applicant was posted at INS India, New Delhi (Peace posting). It is pertinent to mention that as per Part II- case summary in the summary and opinion of Col R K Anadura, VSM, Senior Adviser (Medicine and Neurology) dated 16.02.2019, it is stated to the effect:-

"Part-II CASE SUMMERY AND EVALUATION

CASE SUMMARY: *This 33 yrs old serving sailor is a case of Seizure Disorder since 2006. He had one episode of Generalized Tonic-Seizures (GTCS) in Jan 2009 with history of two similar episodes in May 2006 and Oct 2008. His initial CT Brain and EEG were normal. He was started on AEDs (Dilantin Sodium) in Feb 2009. He gives history of myoclonic jerks. He denies h/o seizures disorder in the family/ substance abuse/ head trauma in the past. In view of no occurrence of seizure his AEDs were tapered off and stopped. He was off AEDs from May 2014, but he had recurrence of GTCS on 05 Dec 2014 and he was restarted on*

AEDs (Valproate 300 mg BD) in Dec 2014. Since then patient is stable and asymptomatic on medication. Presently he is due for release medical board."

9. From the above, it is clear that the Release Medical dated 28.02.2019 had rightly assessed the onset of the disability i.e. in May, 2006 with the applicant having history of episode of Seizure in May, 2006 whilst he was posted onboard INS Akshay (afloat service) and as per Para 33, Chapter VI, GMO (Mil Pen) 2002 amendment 2008, it is stated to the effect:-

"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 infarction 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 aggravation will be appropriate if the attack takes place while serving in those areas."

Therefore, the RMB dated 28.02.2019 had rightly assessed the disability of the applicant i.e. Seizure Disorder as being aggravated by military service with its onset whilst the applicant was posted on board INS Akshay (afloat service).

10. 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).

CONCLUSION

11. Therefore, in view of our analysis, the OA 612/2020 is allowed and the Respondents are directed to *grant the benefit of the disability element of pension @30% for life* for the disability of Seizure Disorder *rounded off to 50% for life in view of judgment of Hon'ble Apex Court in Union of India versus Ram Avtar (supra) from the date of discharge i.e 31.07.2019*. 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.

12. No order as to costs.

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


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)


[JUSTICE ANU MALHOTRA]
MEMBER (J)

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