

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

N.

OA 811/2019 WITH MA 85/2021

Lt Col Abraham John (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

:

Mr. Shakti Chand Jaidwal, Advocate

For Respondents

:

Mr. Shyam Narayan, 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 dismissed the OA. Faced with the situation, learned counsel for the applicant 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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**COURT NO. 1, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**O.A. No. 811 of 2019**

**In the matter of :**

**Lt Col Abraham John (Retd)**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Shri Shakti Chand Jaidwal, Advocate**

**For Respondents : Shri Shyam Narayan, Advocate**

**CORAM:**

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

**ORDER**

The present application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, aggrieved by the denial of disability pension vide the impugned letter dated 23.10.2017 (Annexure A-1) as the disability suffered by him was held neither attributable to nor aggravated by military service. Along with the disability pension, the benefit of broad-banding and arrears along with interest have also been prayed for.

2. Brief facts of the case are that the applicant was commissioned in the Indian Army on 21.06.1977 and

retired prematurely on 12.12.2005 being in low medical category P2 (P). The Release Medical Board (RMB) held in March, 1998 assessed the disability of the applicant for the disability 'HYPERTROPHIC CARDIO MYOPATHY (OBSTRUCTIVE)' @ 20% for two years and held the same as 'neither attributable to nor aggravated by military service (NANA).

3. The initial claim for disability pension of the applicant was rejected by the respondents vide letter dated 23.10.2017 impugned herein. Thereafter, the first appeal dated 08.11.2017 preferred by the applicant was rejected by the Appellate Committee on First Appeals (ACFA) vide letter dated 28.09.2018. The second appeal of the applicant dated 18.10.2018 was also rejected by the Second Appellate Committee on Pension (SACP) vide letter dated 09.07.2019 giving detailed reasons. Hence, the present OA.

4. Learned counsel for the applicant submitted that since the applicant was found medically fit, mentally and physically at the time of his commission and there was no note in his service documents with regard to suffering from any disability at that time, his disability should be

considered as attributable to military service and since the applicant was discharged in low medical category, he should be granted disability pension for life. He further submitted that as the disability of the applicant had occurred while on duty, there is a causal connection between service of the applicant and the disability.

5. Learned counsel explained the difficult and challenging duties performed by the applicant during his postings in high altitude areas in J&K Sector from October, 1986 to September, 1988, where due to serving in adverse climatic conditions and stress and strain of service, the applicant had medical problems like shortness of breath, fatigue and giddiness from 1987 onwards, however, the applicant continued to serve till September, 1988; thereafter the applicant was posted to Ahmedabad and was involved in preparing a parade ground for a ceremonial parade on a difficult place and there the applicant had to work day and night and with stress and strain.

6. Learned counsel submitted that due to the stress and strain of prolonged working hours towards the end of the project, the medical condition of the applicant got

aggravated and the applicant started fainting at times; and when the applicant was admitted to the hospital, he was found suffering from 'Hypertrophy Cardiomyopathy (Obstructive)' and was placed in medical category P2 permanent. It is also contended that due to the medical condition, which was permanent in nature, and lack of career progression, the applicant sought premature retirement and accordingly retired on 01.06.1998.

7. Learned counsel further stated that the RMB has erred in considering the disability as neither attributable to nor aggravated by service as the disability has occurred in June, 1988 with origin of the symptoms in 1987 while the applicant was serving in HAA till September 1988 at Leh (J&K). Learned counsel further contended that the RMB further erred in considering the disability for two years only and referred to the policy letter dated 07.02.2001 to contend that as the disability suffered by the applicant was of permanent nature and the applicant was never called for re-assessment of the disability, nor has he sought for re-assessment, hence the disablement may be considered for life.

8. The learned counsel further submitted that while denying the disability pension, the respondents failed to appreciate the provisions contemplated under Rules 5 and 14(b) of the Entitlement Rules for Casualty Pensionary Awards, 1982 (hereinafter referred to as 'Entitlement Rules, 1982'), which provide that in case of discharge from service in low medical category, if no note is on record at the time of joining of service, the deterioration in health is to be presumed due to service conditions. The learned counsel further relied on various provisions of the Entitlement Rules, 1982 to submit that any disease contracted during service, would be presumed to be attributable to service and worsening of the same during service would be treated as aggravated by military service and onus to prove otherwise lies with the respondents only.

9. The learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in **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 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 disability 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. Referring to Rule 9 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.

10. *Per contra*, learned counsel for the respondents, through the counter affidavit filed, submitted that since the RMB, being an Expert Body, has considered the disability of the officer 'Hypertrophic Cardio Myopathy (Obstructive)' as 'neither attributable to nor aggravated by military service', the applicant is not entitled to disability pension. He further submitted that while rejecting the second appeal filed by the applicant, the SACP has given detailed reasons for rejecting the claim of disability pension. He, therefore, prayed that the OA may be dismissed.

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

12. In the present case, the applicant was commissioned on 16.12.1978 and while in service, he was detected to be suffering from 'Hypertrophic Cardio Myopathy (Obstructive)' and was discharged prematurely, at his own request, with effect from 01.06.1998 after rendering 19 years and 05 months of service. The RMB held the disability as neither attributable to nor aggravated by military service. While rejecting the second appeal, the SACP, vide letter No. B/38046A/007/2019/AG/PS-4 (2<sup>nd</sup> Appeal) dated



09.07.2019, gave the detailed reasons for rejection, which read as under :

*"The veteran officer's ID was detected in Jan 1989 at Pune (Peace) when he presented with complaints of effort intolerance and giddiness. Investigations revealed hypertrophic non obstructive cardiomyopathy with a normal LV function. He was placed in low medical category and managed conservatively. At RMB, he was asymptomatic with limited physical activity on medication. The officer, in his appeal has contended that he was symptomatic for more than a year; however there is no documentary evidence to support the same. ID Hypertrophic Obstructive Cardiomyopathy is a disease of the heart muscle which is idiopathic in origin. Hence, per se, ID is not attributable to service. Aggravation is conceded when the individual does not get the benefit of sheltered appointment and services in Field/HAA/CI Ops Area/Afloat service following onset of the ID or in case of delayed and inappropriate treatment. In the instant case, the indl was asymptomatic and was detected to have the ID in a peace station. He continued to serve in peace stations after onset. Diagnosis and treatment were prompt and adequate and he was asymptomatic at the time of release. Hence, ID is conceded as being neither attributable by service (Para 8, Chap VI, GMO 2002, amendment 2008)."*

13. It would be useful to refer to the Para 8 of the Chapter VI of the Guide to Medical Officers (Military Pensions), 2002, amendment 2008, to recognise the cause of the disability in question, which is reproduced as under :

***"8. Cardiomyopathy.***

*Cardiomyopathies are diseases of heart muscle of unknown origin. It is a distinct entity by itself and excludes the diseases of heart such as IHD, hypertensive heart disease, congenital heart disease and all forms of specific heart muscle diseases. In hypertrophic cardiomyopathy the role of heredity is convincing. Many forms of specific heart muscle disease produce clinical picture indistinguishable from dilated cardiomyopathy e.g. connective tissue*

*disorder, sarcoidosis and alcoholic heart 13 disease. In contrast amyloidosis and eosinophilic heart disease produce restrictive cardiomyopathy. Myopathies are generally idiopathic diseases. However, aggravation may be examined if the individual did not get the benefit of immediate attention and sheltered appointment. Alcohol induced cardiomyopathy is rejectable."*

*[Emphasis supplied]*

From the reading of the aforesaid, it is clear that the disability in question is not attributable to military service and the same is genetic/inherited and if the individual was not managed immediately with required treatment or was not given sheltered appointment, aggravation of the disability could be assessed. In the present case, after going through the medical documents filed by the applicant along with his rejoinder, we find that although the date of origin of the disability is mentioned as June, 88, however, in the column of approximate date and period of treatment, the duration is mentioned as 5 weeks and the period of treatment at MH Pune, is mentioned as '**Jan 89 to Feb 89**' the period when he was posted at peace station and the applicant has not filed any documentary evidence to support his statement of any prior treatment relating to the disability. Thereafter also, till his retirement, he was serving continuously in peace stations. The applicant in

this case himself requested for premature retirement, hence question of providing sheltered appointment does not arise.

14. Moreover the general medical literature on this disability states the following :

***"Hypertrophic obstructive cardiomyopathy (HOCM) is a relatively common disorder. Historically, it has been referred to as idiopathic hypertrophic subaortic stenosis. HOCM is a significant cause of sudden cardiac death in young people, including well-trained athletes, affecting men and women equally across all races. In most patients, it results from asymmetric septal hypertrophy causing outflow obstruction of the left ventricle. It is difficult to diagnose and presents a challenge to medical health professionals in evaluating at-risk athletes. Unfortunately, hypertrophic obstructive cardiomyopathy is often not diagnosed until a significant cardiac event has occurred. The hypertrophy can occur in any segment of the left ventricle but is most common in the interventricular septum. This often results in obstruction of blood flow through the left ventricular outflow tract. HOCM is a genetic disorder. Defects in several genes have been identified that result in septal hypertrophy. The condition is usually asymptomatic in children but may first present with sudden death in teenagers and adolescents."***

***[Emphasis supplied]***

15. In light of the above, we do not find any infirmity in the assessment of the RMB or the decisions of the competent authority and we are of the considered view that the RMB has correctly held the disability as 'neither attributable to nor aggravated by military service'. The OA, therefore, lacks merit and accordingly stands dismissed.

16. Pending MAs, if any, stand closed accordingly. There is no order as to costs.

Pronounced in open Court on this 26<sup>th</sup> of September, 2023.

**[JUSTICE RAJENDRA MENON]  
CHAIRPERSON**

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

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