

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

OA 494/2019 WITH MA 1067/2019

Ex Sgt Sanjeev Kumar ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. Niranjana Das, Advocate

CORAM

HON'BLE MS. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

MA 1067/2019

Keeping in view the averments made in the application and in the light of the decision in *Union of India and others Vs. Tarsem Singh* (2009(1) AISLJ 371), the delay in filing the OA is condoned.

2. MA stands disposed of.

OA 494/2019

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to accept the disability of the applicant as attributable to/aggravated by air force service and grant disability

element of pension @30% rounded off to 50% with effect from the date of discharge of the applicant; along with all consequential benefits.

4. The applicant was enrolled in the Indian Air Force on 05.01.1985 and discharged on 31.03.2016. The Release Medical Board dated 31.03.2015 held that the applicant was fit to be discharged from service in composite low medical category for the disabilities - Stargardt's Disease @ 30% for life and Dyslipidemia @1-5% while the qualifying element for disability pension was recorded as NIL for life on account of disabilities being treated as neither attributable to nor aggravated by Air Force service (NANA). During the course of arguments, it was submitted by the applicant that he is not pressing for disability (ii) Dyslipidemia.

5. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]***, Learned Counsel for 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 Air Force 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, while the learned counsel for the respondents, has not disputed the facts of the case regarding the disability, he highlighted the Opinion of the Release Medical Board to the effect that the aforesaid disability of the applicant was assessed as "neither attributable to nor aggravated".

7. We have heard the learned counsel for the parties and have perused the record produced before us. A perusal of the aforesaid Regulation 153, therefore, reveals that the disability pension is payable to an individual who is discharged from service on account of a disability which is attributable to or aggravated by Air Force service and assessed at 20% or more.

8. The question whether the disability is attributable to or aggravated by Air Force service is to be determined under the rules contained in Appendix II. The said Appendix II contains the Entitlement Rules for Casualty Pensionary Awards, 1982 as amended from time to time. Prior thereto, there had been other Entitlement Rules for Casualty Pensionary Awards. Rule 4 of the Entitlement Rules for Casualty Pensionary

Awards, 1982, being relevant on the point, is re-produced as follows:

"4. Invaliding from service is a necessary condition for grant of disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service. ICO/OR and equivalents in other services who are placed permanently in a medical category other than 'A' and are discharged because of alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment out are discharged before its completion of their engagement will be deemed to have been invalidated out of service."

9. On a perusal of the medical records, we find it relevant to refer to Medical Literature with respect to the disability of the applicant, wherein as per the National Eye Institute report, reproduced as under:

Stargardt disease is usually caused by changes in a gene called ABCA4. This gene affects how your body uses vitamin A.

The body uses vitamin A to make cells in the retina (the light-sensitive layer of tissue at the back of the eye). Then the ABCA4 gene makes a protein to clean up the fatty material that's left over. In Stargardt disease, this gene doesn't work — so the fatty material builds up in yellowish clumps on the macula. Over time, this fatty material kills the light-sensitive cells and destroys your central vision.

Stargardt disease is an inherited genetic disease, which means it gets passed down from parents to children.

10. On an analysis of the aforesaid Para of GMO, 2002, it can be taken into consideration that the issue of Stargardt's Disease usually arises in cases of eyes, wherein there is a

change in a specific gene ABCA4, and that when this gene is not able to make a protein that is responsible to clean up the fatty material, this fatty material kills the light-sensitive cells, thereby, destroying the central vision of the person, leading to Stargardt's Disease..

11. As per an Article published on 02nd Dec, 2022 by Dr. Kirsten Boyd, Director of Patient Education, American Academy of Ophthalmology, published on the Journal Page of ***American Academy of Ophthalmology***, Stargardt disease is an eye disease that causes vision loss in children and young adults. It is an inherited disease, meaning it is passed on to children from their parents. Stargardt's disease is often called juvenile macular dystrophy. In people with Stargardt's disease, special light-sensing cells in the macula, called photoreceptors, die off. Central, or detailed, vision becomes blurry or has dark areas. It may also be difficult to see colours well.

12. As per a Research Paper¹ titled ***"Stargardt's Disease"***, Stargardt disease (STGD1) is the most common cause of juvenile macular dystrophy. Mutations in the adenosine triphosphate binding cassette transporter alpha 4 subunit

¹ Kohli P, Tripathy K, Kaur K. Stargardt Disease. [Updated 2024 Jan 8]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2024 Jan-. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK587351/>

(ABCA4) gene cause this condition and are inherited in an autosomal recessive pattern. STGD1 is a heterogeneous disease with many clinical presentations and varying rates of the age of onset and disease progression.

13. As the medical literature referred above shows that Stargardt's Disease is a childhood macular dystrophy, thereby leading to the situation that it could have existed prior to the enrollment and being a genetic disorder, it could be easily inherited. In respect of such diseases occurring while in service, we may refer to Rule 14 of the Entitlement Rules for Casualty Pensionary Awards, 1982 which reads as under:

14. In respect of diseases, the following rule will be observed:-

(a) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease will fall for acceptance on the basis of aggravation.

(b) 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 the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) If the disease is accepted 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.

14. In the case of the applicant, there is nothing to show that the conditions of Air Force service determined or contributed to the onset of the disease, specifically when none of the places wherein applicant has served, is a field or a CAA or a CI Ops area as per his posting profile, with all postings in the peace areas and that it could be presumed that the medical conditions was not due to the circumstances of duty in air force service.

15. In view of the aforesaid analysis, we are of the view that the present OA is devoid of merit and therefore, is liable to be dismissed.

16. Hence, the OA 494/2019 is dismissed.

17. No order as to costs.

18. Miscellaneous applications, if any, pending stand closed.

Pronounced in the open Court on 2 day of April, 2024.


(JUSTICE RAJENDRA MENON)
CHAIRPERSON


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

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