

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

O.A. No. 648 of 2019 with M.A. No. 1236 of 2019

In the matter of :

Ex Nb Sub Sirigiri Ranganayakulu ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Virender Singh Kadian, Advocate

For Respondents : Shri Prabodh Kumar, Advocate

CORAM :

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

ORDER

M.A. No. 1236 of 2019 :

Vide this application, the applicant seeks condonation of 8265 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. 648 of 2019 :

The present application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant who is aggrieved by the impugned order dated 24.08.2018 in reply to the petition dated 01.06.2018 of the applicant, seeking grant of the disability pension with effect from the date of his discharge from service with arrears and interest rejecting the same as time-barred

2. Briefly stated, the facts of the case are that the applicant was enrolled in the Indian Army on 31.12.1977 and was discharged from service on 31.10.2004 in low medical category. Before his discharge, the applicant was brought before the duly constituted Release Medical Board (RMB) in August, 2004. The RMB assessed his disabilities '1. NIDDM 2.GOUT and 3. HYPERLIPIDEMIA, compositely assessed @ 20% permanent and the same were held as 'neither attributable to nor aggravated by military service (NANA)'

3. Initially, the claim for grant of the disability element of pension was processed which was rejected by the respondents vide letter dated 01.07.2005 for the reason that the disabilities

of the applicant were considered as neither attributable to nor aggravated by military service. The first appeal dated 19.07.2005 preferred by the applicant against denial of disability pension was rejected by the respondents vide letter dated 07.03.2007 on the same ground. Thereafter, the applicant filed the second appeal dated 01.06.2018 which was also rejected by the respondents vide their letter dated 24.08.2018 being time-barred. Hence, the present OA.

4. Learned counsel for the applicant re-iterating the factual matrix of the case, submitted that the applicant, at the time of enrolment, was medically and physically fully fit, and no note was made in his medical documents that he was suffering from any disease at that time. Learned counsel submitted that the applicant, during his service tenure, was posted in different field areas/hard terrains/peace areas where he served at remote areas and in difficult conditions for prolonged period and these serving areas had different, harsh and challenging geographical, social and environmental conditions. He added that the applicant had frequent transfers to various places having different environments, different food availability and

all of this resulted into stress and strain of service and emotional distress due to which the applicant was suffered from the disabilities, that even after being diagnosed with these disabilities, he had to serve with the stress and strain of service as detailed above which further worsened the disabilities.

5. The learned counsel further submitted that while denying the disability pension, the respondents failed to appreciate that as per 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 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.

6. 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 including **Union of India and Ors. Vs. Rajbir Singh** (2015) 12 SCC 264 and **Union of India & Ors. Vs. Manjit Singh** [JT 2015 (5) SC 255], 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. Referring to Rule 9 of the Entitlement Rules for Causality Pensionary Awards, 1982, he contended that the applicant should have been given the benefit of doubt and the disability should have been conceded aggravated by service only. Learned counsel further contended that the Tribunal has already granted disability pension to many similarly situated persons from the date of retirement.

7. Learned counsel for the respondents, in their counter affidavit, submitted that the disabilities of the applicant have been assessed by the RMB @ 20% but the same had been held as neither attributable to nor aggravated by military service and not connected with service since it is due to metabolic disorders. Thus the applicant was not entitled for grant of disability element of the disability pension in terms of Regulation 179 of the Pension Regulations for the Army, 1961 (Part-1). He prayed for dismissal of OA.

8. We have heard the learned counsel for the parties and have perused the record. The disabilities of the applicant has

been assessed @ 20%, therefore, the only issue to be decided is whether the disability of the applicant could be held attributable to or aggravated by military service ?

9. The law on the issue of attributability of a disability is already settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India [(2013) 7 SCC 316]***, which has been followed in subsequent decisions of the Hon'ble Supreme Court and in a catena of orders of this Tribunal, wherein the Apex 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. The guidelines laid down vide the verdict in *Dharamavir Singh (supra)* are as under:-

"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."

10. In the light of the law already laid down with regard to the attributability, we find that the RMB has denied the attributability/aggravation on the ground that the disability is genetic or metabolic disorder. However, taking note of the facts and circumstances of the case, we are of the view that this reasoning given by the RMB followed by the respondents for denying disability element of disability pension to the applicant is a generalised reasoning and thus not convincing. The Tribunal has consistently taken a view that the armed forces services have their own pressure of rigorous training and

associated stress and strain of service and holding the disability in question as only constitutional in origin without giving any specific grounds or record, the opinion may not be adequate. 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. There is no denying the fact that the stress and strain of service may cause the disease like diabetes, hypertension etc. Admittedly, the applicant was enrolled in the year 1977 and the disability has first started on 2003 i.e. after about 26 years of service. There has not been any note regarding his leading a poor lifestyle, weight issue etc. Therefore, the benefit of doubt should be given to the applicant in these circumstances.

11. Moreover, the Hon'ble Supreme Court in **Union of India & Ors. Vs. Rajbir Singh, (2015)12 SCC 264** and in **Commander Rakesh Pande Vs. Union of India & Ors. [Civil Appeal No. 5970 of 2019]** decided on 28.11.2019, upheld the decision of the Armed Forces Tribunal granting disability pension for the disability 'NIDDM' holding the same attributable

to military service. Further, although 'Gout' is a genetic disorder and 'Hyperlipidemia' is a metabolic disorder, however, it can also not be denied that the same can be triggered by stress, diabetes, hypertension, psoriasis etc. In this regard, we may refer to the medical reviews/studies available on the internet to show that the diabetes, gout, hyperlipidemia^e are all interrelated diseases, to the effect that people with Type 2 Diabetes often have high levels of uric acid in their blood which could be due to extra fat and when the body creates more insulin which makes it harder for the kidneys to get rid of uric acid which may lead to gout; diabetes tends to lower good cholesterol levels and raise triglycerides and bad cholesterol levels, which increases the risk for heart disease and stroke. In the present case, the onset of all three disabilities is at the same time and thus, it can be made out that these are interrelated diseases and probably that might be the reason why the RMB had assessed all the three disabilities together. Accordingly, in terms of the law laid down in the case of *Dharamvir Singh (supra)*, the disability of the applicant should be held attributable to/aggravated by the military service.

12. In light of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension in respect of disabilities. The respondents are directed to grant disability element of pension to the applicant @ 20% which be rounded off to 50% for five years from the date of 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 belatedly, 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. 09.04.2019.

13. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

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

Pronounced in open Court on this 10th day of May,
2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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