

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

OA No. 1411/2018 with MA 1419/2018

Ex SWR Pramod Kumar Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate

For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

M.A 1419/2018

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 7010 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors. Vs Tarsem Singh** 2009(1) AISLJ 371 and in **Ex Sep Chain Singh Vs Union of India & Ors** (Civil Appeal No. 30073/2017) and the reasons mentioned, the

MA 1419/2018 is allowed and the delay of 7010 days in filing the OA 1411/2018 is thus condoned. The MA is disposed of accordingly.

O.A. 1411/2018

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this O.A and the reliefs claimed in Para 8 - read as under:

“

- a) Direct respondents to treat the disability of the applicant as attributable to/aggravated by military service and grant him the disability pension with the benefits of rounding off/broad banding.***
- b) Direct respondents to pay the due arrears of disability pension from the date of his discharge with interest @12% p.a. with all the consequential benefits.***
- c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case. ”***

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 28.10.1994 and was discharged from service on 30.09.1999 under Army Rule 13 (3) item III (v) after rendering 4 years, 11 months and 3 days of service being inefficient soldier. The applicant suffered from the disability namely "Hansen's disease", which was assessed, by the Release Medical Board dated 07.09.1999, @11-14 % for two years and considered it neither attributable to or nor aggravated by service.

3. The claim for the grant of the disability pension was considered and the competent authority upheld the decision of the medical board and denied the disability pension vide letter No. G-3/51/54/1/2000 dated 22.06.2000. The applicant did not prefer any appeal within the stipulated time but filed a case No. CHWC 3566/2005 in the Hon'ble High court of Patna for reinstatement into the service challenging the discharge order which was dismissed vide order dated 27.09.2007. The applicant again filed a petition vide CJWC No. 8588/2008 which was also dismissed vide order dated 05.05.2011, aggrieved of

which, the applicant has filed the instant O.A. and thus, in the interest of justice, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that there was no note made in AFMSF-2 of the applicant at the time of the recruitment about existence of any conditions which could have suggested the existence of the said disability.

5. The learned counsel for the applicant submitted that the applicant suffered from the disability namely "Hansen Disease" while performance of military duty, which was assessed, by the medical board @11-14 % for two years and considered it as neither attributable to or nor aggravated by service.

6. The learned counsel of the applicant submitted that the applicant suffered with the said disability due to stress and strain of military training at Ahmednagar.

7. The learned counsel for the applicant placed reliance on the verdict of the Hon'ble Supreme Court in **Rajbir Singh Vs. Union of India & Ors. (2015 (2) SCALE 371)**.

Reliance is also placed on the verdict of the Hon'ble Supreme

Court in **Dharamvir Singh Vs. Union of India & Ors. (Civil Appeal No. 4949 of 2013)** wherein it was observed in para 28, which reads 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 nonbattle 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 AppendixII (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."

to contend to the effect, that 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.

8. Per Contra, the learned counsel for the respondents submitted that the applicant suffered with the said disability which was assessed by the Release Medical Board, @11-14% for

two years and considered it as neither attributable to nor aggravated by service.

9. The learned counsel for the respondents submitted that there was no causal connection between the disability of the applicant and the military duty since the disability of the applicant was congenital in nature.

10. The learned counsel for the respondents further relied upon Rule 173 of the Pension Regulation for Army, 1961 (Part-I) which stipulates that, disability pension is granted when the personnel is invalided out from service on account of the disability being attributable to or aggravated by military service and is assessed at 20% or more. The learned counsel submitted that since the disability does not fulfil the twin conditions stipulated in the rules, hence the disability 'Hansen disease' was rightly assessed as NANA.

11. The learned counsel for the respondents placed reliance on the verdict of the Hon'ble Supreme Court in **UOI Vs. Damodaran AV**, SLP(C) No. 23727/2008 wherein it was held

that the opinion given by the medical authorities is entitled to be given due weight and credence.

ANALYSIS

12. 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 the minimum qualifying criteria for the grant of disability pension is 20% in terms of Para 173 of the Pension Regulation for the Army, 1961. In the instant case, it is not in dispute that the RMB has assessed the disability at 11-14% (less than 20%) for two years and considered it to be neither attributable to nor aggravated by military service.

13. In so far as the attributability or aggravation is concerned which was considered to be NANA by the medical board, it is pertinent to mention that in the instant case the applicant suffered from the said disability of 'Hansen Disease' in December, 1995 at Ahmednagar. Para 31 of the Guide to Medical Officer (Military Pension), 1980 is reproduced herein below :



Hypertension

28. The first consideration should be to determine whether the hypertension is primary (essential) or secondary. If secondary, entitlement considerations should be directed to the underlying disease process (eg Nephritis), and it is unnecessary to notify hypertension separately. It is better to clearly indicate whether it is a case of essential hypertension, giving the evidence in support.

As in the case of atherosclerosis, entitlement of attributability is never appropriate, but where disablement for essential hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. Each case should be judged on its merits taking into account particularly the physical condition on entry into service, the age, the amount and duration of any stress and whether any other service compulsion has operated.

Iritis (Cyclitis)

29. Iritis or cyclitis is inflammation of that part of the eye which lies behind the cornea (transparent portion of the front of the eye). The condition is generally dependent upon some systemic disorder such as syphilis or toxins from septic teeth (or other septic focus) or chronic gonorrhoea or, sometimes, tuberculosis or diabetes or an acute infectious disease. It may be traumatic caused by a perforating wound or possibly by a non-perforating wound (e.g., concussion blows on the eye ball). It may be "sympathetic" i.e., from inflammation of the other eye.

Keratitis

30. Keratitis is inflammation of the cornea with or without ulceration and on healing, an opacity or opacities may be left in the cornea which may interfere with vision. It is essentially an infection by various micro organisms excited by a number of causes e.g., injury, foreign body, conjunctivitis disturbances in the nutrition of the cornea, small pox and herpes etc.

Leprosy

31. Leprosy is caused by Mycobacterium leprae and occurs in two main forms; neural and lepromatous. It is characterised by extreme chronicity and is transmitted mainly if not entirely by contact (usually direct, though possibly indirect but close) of open cases of leprosy with healthy individuals. Although prolonged and close contact is most favourable to transmission, there is evidence to indicate that some highly susceptible individuals may

develop that disease from very limited contact. The mode of entering of the organism into the body is not definitely known, but the possibility of transmission through insect bites cannot be disregarded.

The incubation period is not definitely known and various periods have been given by different authorities. There is a long interval between the exposure to infection and the appearance of definite recognisable symptoms of the disease. However, the accumulated evidence indicates that the incubation period is usually not less than 2 years in an adult but this would not debar an individual showing manifestation of disability between 1-2 years of service being considered for entitlement provided clear evidence of contact is established and as further explained in clause (a) below; "Entitlement".

Cases in which the bacilli can be demonstrated can only be considered as infectious. The bacteriologically positive cases are generally but not always cases of lepromatous type. Lately, some laboratory evidence has been produced that even neural cases are infectious but this view has not as yet been universally accepted.

Entitlement :

- (a) *Attributability*.—Attributability should be accepted in respect of any individual contracting Leprosy after being in service for two years. Cases diagnosed within one year of enrolment cannot be considered as attributable to service. Cases where manifestation of the disease occurs between 1-2 years of service will be decided on their own merits, provided clear evidence of attributability for service reasons is produced. If there is evidence to show that the individual had a prolonged and intimate contact arising out of service with an infectious case, attributability shall have to be conceded.
- (b) *Aggravation*.—Leprosy is not aggravated by conditions normally met within military service. Aggravation can only be conceded when the individual due to circumstances of service, e.g., as prisoner of war or due to prolonged active operations, has not been able to receive proper modern treatment.

Leukemia

32. Leukemia is a malignancy of the lymphatic and haemopoietic system. It occurs in two forms, chronic and acute depending upon the clinical course. Aetiologically leukemia can


14. After perusal of Para 31 of GMO (MP) 1980 reproduced herein above, it is safe to say that for conceding attributability, it is necessary that the personnel serve for minimum period of two years in military service. Also, Para 31 (a) of the GMO (Military Pension), 1980 provides that cases where manifestation of the disease occurs within 1-2 years of service will be decided in its own merits, provided clear evidence of attributability is produced.

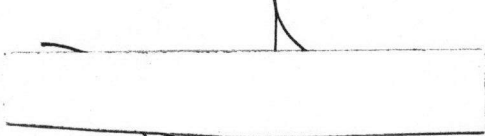
In the instant case, the applicant was enrolled on 28.10.1994 and applicant suffered with the said disability on 06.12.1995 i.e. in 1 year and 2 months of military service. The applicant has, failed to bring on record any documentary evidence which could establish that the disability caused to the applicant was due to prolonged and intimate contact arising out of service with an infectious case and therefore the said disability cannot be attributable to military service. The applicant has also failed to prove any service condition which could be considered for conceding the disease as aggravated by military service.

CONCLUSION

15. We, thus, hold that the disability 'Hansen Disease' has no causal connection with military service and therefore, there is no merit in the case, the OA 1411/2018 is thus dismissed.

Pronounced in the open Court on this day of ^{Hk} 16 May, 2024.


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)


[JUSTICE RAJENDRA MENON]
CHAIRPERSON

/pranav/