

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

OA 163/2019 with MA 577/2019 & MA 1696/2019

In the matter of :

Ex Sigmn Jaivir Singh **... Applicant**

Versus

Union of India & Ors. **... Respondents**

For Applicant : Shri S.M. Dalal, Advocate

For Respondents : Shri Rajesh Kumar Das, Sr. CGSC

CORAM:

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

ORDER

M.A. No. 1696 of 2019 :

Counter affidavit has been filed by the respondents. There being delay in filing the same, the instant application has been filed by the respondents seeking condonation of delay. In view of the averments made in the application, the delay is condoned. Counter affidavit is taken on record. MA stands disposed of accordingly.

M.A. No. 577 of 2019 :

Vide this application, the applicant seeks condonation of 4320 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. 163 of 2019 :

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, who is aggrieved by the finding of the RMB of considering his disability as neither attributable to nor aggravated by service and also rejection of his claim for grant of disability pension vide letter dated 10.05.2005. The applicant is seeking grant of disability pension from 01.04.2004 with broadbanding benefits along with arrears and interest.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 02.03.1995 and was discharged from service on 31.03.2004 being in low medical category S₂H₁A₁P₁E₁ due to the disability 'Other Non Organic Psychosis'. The Release Medical Board (RMB) held before his discharge on 20.12.2003 assessed the applicant's disability i.e. OTHER NON ORGANIC PSYCHOSIS' @ 30% for life, and held the same as 'neither attributable to nor aggravated by

military service (NANA)', based on which, the disability pension was denied to the applicant. Hence, the present OA

3. The initial claim of the applicant was forwarded to the PCDA (P), Allahabad for adjudication vide Signals Records letter dated 08.09.2004 and PCDA(P) Allahabad rejected the said claim vide letter dated 13.04.2005, which was intimated to the applicant vide letter dated 10.05.2005. However, on 01.04.2005, the applicant filed an appeal, which was rejected by the OIC Signals vide letter dated 25.09.2006. The applicant, after obtaining copy of the RMB proceedings through an RTI application, preferred his first appeal dated 20.04.2018, which was replied to by the Signals Records vide letter dated 05.06.2018 rejecting the first appeal of the applicant being time-barred.

4. Learned counsel for the applicant submitted that the applicant, at the time of enrolment, was found medically and physically fully fit and no note was made in his medical documents to the effect that he was suffering from any disease at that time. Learned counsel explained about the stressful and strenuous duties performed during posting to a field and insurgency area of Kupwara in J&K and due to the

harsh, difficult and challenging nature of duties, on 15.11.1997, he suffered from the disease 'Other Non Organic Psychosis'. The applicant was treated in 92 Base Hospital, Srinagar. He was placed in low medical category S2 (Permanent) w.e.f. 30.12.2001. Learned counsel further submitted that the Commanding Officer had withdrawn the sheltered appointment provided to the applicant although he was willing to serve and the applicant was discharged after 09 years and 28 days of service due to the above disability.

5. Learned counsel 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, which has taken place, is to be presumed due to service conditions. Learned counsel submitted that the disease in question was contracted when the applicant was posted in high altitude area of J&K, and there due to the duties assigned put tremendous stress and

strain, hence the disability may be treated as 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 numerous subsequent judgments, along with **Sukhvinder Singh Vs. Union of India and Ors. [2014 14 SCC 364]**, wherein, after taking into consideration various rules and regulations provided in Entitlement Rules and Pension Regulations and also guidelines in Guide to Medical Officers, it was held that 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. Hence, learned counsel pleaded that the applicant is entitled to the disability pension.

7. *Per contra*, learned counsel for the respondents submitted that the applicant's disability was conceded by the RMB, which is an expert body, as neither attributable to nor aggravated by military service as the same was not connected with service. Learned counsel contended that due to non-availability of the alternative appointment in conformity with the low medical category in the unit, the Commanding Officer did not recommend retention of the applicant in service although the applicant had rendered his willingness to continue and thus, he was discharged from service on 31.03.2004. He further pleaded that the applicant was rightly denied the disability pension as per Para 173 of the Pension Regulations for the Army, 1961 (Part-1), the disability of the applicant does not fulfil the primary condition for grant of disability pension of being assessed as 'either attributable to or aggravated by military service'. He, therefore, pleaded that the OA may be dismissed.

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

9. In this case, the applicant was discharged from service on 31.03.2004 due to his disability 'Other Non Organic

Psychosis', which has been assessed @ 30% for life and opined by the RMB as neither attributable to nor aggravated by military service and not connected with service.

10. For determining the issue question of attributability of the disability in question, it may be useful to refer to Para 54 of the Guide to Medical Officers (Military Pensions) 2002 amendment 2008, which provides for details of the factors which have a bearing on attributability and aggravation of psychiatric disorders, which read as under :

"54. Mental & Behavioural (Psychiatric) Disorders

Psychiatric illness results from a complex interplay of endogenous (genetic/biological) and exogenous (environmental, psychosocial as well as physical) factors. This is true for the entire spectrum of psychiatric disorders (Psychosis & Neurosis) including substance abuse disorders. The relative contribution of each, of course, varies from one diagnostic category to another and from case to case.

The concept of attributability or aggravation due to the stress and strain of military service can be, therefore, evaluated independent of the diagnosis and will be determined by the specific circumstances of each case.

(a) *Attributability will be conceded where the psychiatric disorder occurs when the individual is serving in or involved in:-*

(i) *Combat area including counterinsurgency operational area*

(ii) *HAA service.*

(iii) *Deployment at extremely isolated posts*

(iv) *Diving or submarine accidents, lost at sea.*

(v) *Service on sea.*

(vi) *MT accidents involving loss of life or Flying accidents (both as flier and passenger) in a service aircraft or aircraft accident involving loss of life in the station.*

(vii) *Catastrophic disasters particularly while aiding civil authorities like earthquake, cyclone, 41 tsunami, fires, volcanic eruptions (where one has to handle work in proximity of dead or decomposing bodies)*

(b) *Attributability will also be conceded when the psychiatric disorder arises within one year of serious/multiple injuries (e.g. amputation of*

- upper/lower limb, paraplegia, quadriplegia, severe head injury resulting in hemiplegia of gross neurocognitive deficit which are themselves considered attributable to military service. This includes Post Traumatic Stress Disorder (PTSD).*
- (c) *Aggravation will be considered in Psychiatric disorders arising within 3 months of denial of leave due to exigencies of service in the face of:*
- (i) *Death of parent when the individual is the only Child/son.*
 - (ii) *Death of spouse or children. (iii)Heinous crimes (e.g. murder, rape or dacoity) against members of the immediate family.*
 - (iv) *Reprisals or the threat of reprisals against members of the immediate family by militants/terrorists owing to the fact of the individual being a member of the Armed Forces.*
 - (v) *Natural disasters such as cyclones/ earthquakes involving the safety of the immediate family.*
 - (vi) *Marriage of children or sister when the individual is the only brother thereof and specially if their father is deceased.*
- (d) *Aggravation will also be conceded when after being diagnosed as a patient of psychiatric disorder with specific restrictions of employability the individual serves in such service environment which worsened his disease because of the stress and strain involved like service in combat area including counterinsurgency operations, HAA, service on board ships, flying duties.*
- (e) *Attributability may be granted to any psychiatric disorder occurring in recruits and results in invalidment from service only when clearly identifiable severe stressors including sexual abuse or physical abuse are present as causative factor/factors for the illness."*

11. From the above, we find that although the cause of psychiatric illness can be genetic or biological, however, there are various factors provided in order to assess the attributability and aggravation of the disability. It can be made out from the aforesaid provisions that the attributability will be conceded in case the psychiatric disorder occurs when the individual is serving in or involved

in the combat area including counterinsurgency operational area; HAA service; deployment at extremely isolated posts; diving or submarine accidents, lost at sea; services on sea etc. amongst other conditions of service. In the present case, the applicant was diagnosed with the disability on 15.11.1997 while he was posted in field area at Srinagar (J&K). While considering the disability of the applicant as neither attributable to nor aggravated by service, the RMB has failed to take note of the summary and opinion dated 07.12.2003 which stated that : *He had broken down after he had served for about a year in CI Ops in Kupwara in J&K (1997). He had manifested ... lack of self care, .. syllaboe speech, lack of rapport, apathetic xxx; lack of insight and judgment of ...onset.*" Therefore, in terms of sub-clause (i) of clause (a) of Para 54 of the GMO (MP) 2008, the disability of the applicant deserves to be held as attributable to the military service.

12. Moreover, 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.”

13. The Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Rajbir Singh [Civil Appeal Nos. 2904 of 2011]** decided on 13.02.2015, after considering the case in *Dharamvir Singh (supra)* upheld the decision of this Tribunal granting disability pension and observed as under :

“15. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service.....”

14. In view of the above, we are, therefore, of the considered view that the RMB has failed to consider the service profile of the applicant at the time of onset of the disability in question and hence erred in assessing the disability of the applicant as 'neither attributable to nor aggravated by military service' despite there being a settled law by virtue of the verdict of the Hon'ble Supreme Court as referred to above on the point of attributability/aggravation and thus the disability suffered by the applicant is held attributable to/aggravated by the military service.

15. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled for the disability element of pension in respect of the disability 'Other Non Organic Psychosis' assessed @ 30% for life with rounding off benefit for life from the date of discharge.

16. Accordingly, OA 163 of 2019 is allowed. The respondents are directed to grant the disability element of pension to the applicant @ 30% for life, which is directed to be rounded off to 50% for life 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 filed the present OA after a considerable delay, in view of the law laid down in the case of *Tarsem Singh (supra)*, arrears will be restricted to three years prior to the date of filing of this OA i.e. 25.01.2019.

17. The respondents are directed to calculate, sanction and issue necessary PPO to the applicant within three 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.

18. 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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