

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

**O.A. No. 1055 of 2019**

**with**

**M.A. No. 1731 of 2019**

**In the matter of :**

**Lieutenant Colonel Anil Kumar Joshi (Retd.) ... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Shri Aditya Singh Puar, Advocate**

**For Respondents : Capt Sridhar J. OIC, Legal Cell (Army)**

**CORAM :**

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

**ORDER**

**M.A. No. 1731 of 2019 :**

Vide this application, the applicant seeks condonation of 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 accordingly.

**O.A. No. 1055 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 rejection of his claim for the grant of disability pension for the disability suffered by him i.e. BIFASCICULAR BLOCK FOR RMB' which was opined as neither attributable to nor aggravated by military service by the medical authority.

2. Briefly, the facts of the case, as stated by the applicant, are that the applicant was commissioned in the Indian Army on 19.11.1975 (however, the respondents in their counter affidavit mentioned the date of commission as 22.09.1974 (SSC) and received PC on 22.09.1979). The applicant, on superannuation, retired from service on 30.06.2004 being in low medical category S<sub>1</sub>H<sub>1</sub>A<sub>1</sub>P<sub>2</sub>(Perm)E<sub>1</sub>. Before his retirement, the applicant was brought before the Release Medical Board (RMB) held in February, 2004, which assessed the disability of the applicant i.e. BIFASCICULAR BLOCK FOR RMB' @ 30% for life. However, the disability was held as 'neither attributable to nor aggravated by military service'. Based on the same, the applicant was denied disability pension.

3. The initial claim of the applicant for grant of disability pension was rejected by AG/PS-4 vide letter No. 13014/IC-36311/MP-6(B)/027/R/2004/AG/PS-4(D) dated 06.05.2004 with an advice to prefer first appeal, if not satisfied with the decision. The applicant preferred his first appeal dated 28.07.2017 which was rejected by the respondents vide letter No. B/40431/Misc/2017/AG/PS04(Imp-I) dated 20.12.2017 considering the same as time-barred. Aggrieved by this, the applicant filed the present OA seeking disability pension.

4. Learned counsel for the applicant submitted that since the applicant was found fully fit, mentally and physically at the time of joining the service and there was no note in his service documents to the effect that he was suffering from any disease at that time, his disability should be considered as attributable to military service and since the applicant was discharged in the medical category lower than that in which he was recruited, he should be granted disability pension for life. Learned counsel further submitted that the applicant had served in many peace, field and active operational posting places during his tenure of service and as the disability of the

applicant had occurred while in service, therefore there is a causal connection between the service of the applicant and the disability due to stress and strain of service. Learned counsel further stated that the RMB has erred in considering the disability as neither attributable to nor aggravated by service as the disability had occurred while in service and as the disability in question is part of the diseases listed in Appendix II to Entitlement Rules, 1982 declared as affected by stress and strain of service.

5. Learned counsel then submitted that while denying the disability pension, the respondents failed to appreciate the provisions contemplated under various rules including 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. Learned counsel further relied on various provisions of the Entitlement Rules to submit that 'inherent constitutional tendency' is not a disease in itself and

further 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 the onus of proving otherwise lies with the respondents only.

6. Learned counsel placed reliance on various judgments of the Hon'ble Supreme Court including **Dharamvir Singh Vs. Union of India and Ors.** [(2013) 7 SCC 316], **Union of India & Ors. Vs. Rajbir Singh** [(2015) 12 SCC 264], **Union of India & Ors. Vs. Angad Singh Titaria** [(2015) 12 SCC 257], **Union of India & Others Vs. Manjeet Singh** [AIR 2015 SC 2114] and **Sukhvinder Singh Vs. Union of India** [(2014) STPL (web) 468 SC] and submitted that the respondents' action in denying the disability pension is unjustified and unlawful, when the disability recorded by the RMB occurred during the military service and was caused due to stress and strain of service. In *Dharamvir Singh (supra)*, 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.

7. *Per contra*, learned counsel for the respondents contended that the applicant is not entitled to the relief claimed for since the RMB, being an expert body, found the disability in question i.e. Bifascicular Block for RMB' as "Neither Attributable to Nor Aggravated by Service". Learned counsel contended that in view of Regulation 53 of the Pension Regulations for the Army, 1961, which provides that

for grant of the disability pension when the disability should be either attributable to and/or aggravated by service and minimum assessment thereof is mandatorily required to be 20% or more and hence, the OA deserves to be dismissed.

8. We have heard the learned counsel for the parties and have also gone through the records. We find that as the disability of the applicant i.e. Bifascicular Block for RMB, has been assessed @ 30% for life, the only issue which needs to be considered in this case is as to whether the disability of the applicant is attributable to or aggravated by military service or not.

9. In the instant case, it is an undisputed fact that at the time of joining the Indian Army, the applicant was found medically and physically fully fit and the disability in question has admittedly occurred during service and at the time of discharge, the applicant was in the medical category lower than that in which he was recruited.

10. As regards the disability 'Bifascicular Block for RMB', it would be helpful to refer to Para 28 - 'Disorders of Cardiac Rhythm and Conduction of Chapter VI of the Guide to Medical

Officers (Military Pensions), 2002 (hereinafter referred to as 'GMO (MP) 2002') for determining the attributability/ aggravation of the disability due to service. The same reads as under:-

**"28. Disorders of Cardiac Rhythm and Conduction**

*These are aberrations in heart rate due to varied pathological and physiological states. These conditions may arise from some organic heart disease like rheumatic heart disease, ischaemic heart disease, hypertension, subacute bacterial endocarditis, myocarditis, vascular disease and drugs. It also occurs as a result of focal sepsis, thyrotoxicosis, excessive use of tea, coffee, tobacco, alcohol and as a result of flatulent distension of the stomach or intestine. Physical exertion or emotional excitement may predispose to an attack. Attributability is conceded if arrhythmia and heart blocks develop as a sequelae to infections in the heart. Aggravation is awarded based on the primary disease affecting heart in relevance to service profile."*

11. Further, in the medical/scientific reviews available on the internet on the disability in question i.e. Bifascicular Block, wherein it is indicated that congenital heart disease can cause the disability in question and that the symptoms of congenital heart disease may not develop until later in life along with other

causes such as heart attack, heart valve disease, high potassium etc. In one such article, the causes for bifascicular block have been described as under (*ref. Cleveland Clinic*):

**“What causes a bifascicular block ?**

***Congenital heart disease typically causes a bifascicular heart block. Congenital means a person is born with structural changes to their heart’s anatomy.***

***Symptoms of congenital heart disease may not develop until later in life. Your risk of developing a heart block increases with age.***

***Less commonly, people inherit a gene change (mutation) that causes a progressive familial heart block. This gene change causes scar tissue (fibrosis) to form on your heart. Sometimes, it also causes calcium deposits (calcification). These changes can cause a heart block.’***

***Heart damage may also cause bifascicular block. This damage may be due to :***

- ***Heart attack (myocardial infarction)***
- ***Heart (cardiovascular) disease.***
- ***Heart valve disease.***
- ***High potassium (hyperkalemia).”***

With regard to congenital heart disease, we may refer to Para 22 of Chapter VI of GMO (MP) 2002, which reads as under :

**“22. Congenital Heart Disease**

***It has been routinely observed that cases of congenital heart diseases like atrial septal defect having escaped detection at the time of recruitment become symptomatic and detected very late in service. Some of these diseases manifest quite late***

***i.e. during 3<sup>rd</sup> to 4<sup>th</sup> decade of life and manifest only when subjected to exceptional stress and strain of service e.g. HAA/FSCA/uncongenial areas. Aggravation can be conceded in such cases.***

12. From the aforesaid, it is clear that Bifascicular Block is a congenital disease detection of which could escape while medical examination during joining of service and may be detected very late in service. In view of this, it is apparent that the disability of the applicant has no causal connection between the said disability and the military service since the applicant's disability is congenital which has no relationship with the performance of any military duty and there is no specific reason of having suffered the disease has been shown. The RMB has, therefore, rightly assessed the disability of the applicant i.e. Bifascicular Block, as 'neither attributable to nor aggravated by service.'

13. In view of the aforesaid discussion, the disability 'Bifascicular Block' having no causal connection with the military service, is not accepted as attributable to or aggravated by service and thus the applicant is not entitled to disability pension for this disability.

14. With the aforesaid, having no case made out, the OA stands dismissed.

15. There is no order as to costs.

Pronounced in open Court on this 30<sup>th</sup> day of July, 2024.

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**[JUSTICE RAJENDRA MENON]**  
**CHAIRPERSON**

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

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