

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

O.A. No. 1173 of 2019 WITH MA 1919/2019

In the matter of :

Ex JWO Sudhir Kumar Saxena **Applicant**

Versus

Union of India & Ors. **Respondents**

For Applicant : Mr. Durgesh Kumar Saxena, Advocate

For Respondents : Sgt. Pankaj, DIV, Legal Cell

CORAM:

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

O R D E R

M.A 1919/2019

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 811 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of ***Uol & 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 1919/2019 is allowed and the delay of 811 days in filing

the OA 1173/2019 is thus condoned. The MA is disposed of accordingly.

O.A. 1173/2019

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

"a) Quash and set aside the impugned letters dated 03.11.2016 & 24.05.2019.

b) Direct the respondents to grant disability pension @75% after rounding off from 60% for life as recommended by RMB to the applicant with effect from 01.08.2016 i.e. the date of discharge from service with interest @12%p.a. till final payment is made.

c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

BRIEF FACTS

3. The applicant was enrolled in the Indian Air Force on 20.08.1978 and discharged from service on 31.07.2016 under the clause "on attaining the age of superannuation" after rendering total 37 years and 347 days of regular service.

4. The applicant was initially placed in low medical category for the ID Alcohol Dependence Syndrome along with the advice to abstain from alcohol. Subsequently, the applicant was upgraded to medical category AYE for the ID: Alcohol Dependence Syndrome vide AFMSF-15 dated 06.05.2002. The applicant suffered from the disabilities viz. (i) Primary Hypertension assessed @30% for life, (ii) Bipolar Affective Disorder assessed @40% for life, and (iii) IGT assessed @20% for life and placed him at low medical category A4G4(P) for the said disabilities. The medical authority considered the disabilities of the applicant as neither attributable to nor aggravated by service.

5. The claim for the grant of disability pension was considered by the competent authority and on adjudication, the AOC AFRO upheld the recommendation of the RMB and rejected the claim of the applicant for the grant of disability pension vide letter No. RO/3305/3/Med dated 26.09.2016 with an advice to the applicant with an option that he may prefer appeal to the Appellate Committee within six months from the date of receipt of letter.

6. The applicant filed legal notice against the rejection of the claim for the grant of disability pension on 04.04.2019, which was suitably replied to by the respondents vide letter No. Air HQ/99798/1/651792/DAV (DP/RMB) dated 24.05.2019, aggrieved by 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

7. The learned counsel for the applicant submitted that the applicant was released from service on 31.07.2016 on completion of his term of engagement. The learned counsel for the applicant submitted that the RMB assessed the disabilities of the applicant viz. (i) Primary Hypertension assessed @30% for life, (ii) Bipolar Affective Disorder assessed @40% for life, and (iii) IGT assessed @20% for life and placed him at low medical category A4G4(P) for the said disabilities. The medical authority considered the disabilities of the applicant as neither attributable to nor aggravated by service.

8. 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 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 acceptance for of individual's 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.

9. The learned counsel for the applicant placed reliance on the verdict of the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar** AIR 1971 SC page 1409 wherein it was held as under :-

"that pension is not a bounty payable on the sweet will and pleasure of the Government and that on the other hand, the right to pension is a valuable Right vesting with a Government servant...."

10. The learned counsel for the applicant placed reliance on the order of the Armed Forces Tribunal in TA No. 48/2009 in WP (C) 6324/2007 titled as **Nakhat Bharti Vs. Union of India & Ors.** wherein it was held that the medical authorities have to record the reason why the disease which was present at the time of acceptance of

service could not be detected and that if such cogent reason is not found in the finding of the Medical Board then a presumption has to be drawn that the disease had arisen during the course of service.

11. per contra the learned counsel for the respondents submitted that the RMB assessed the disabilities of the applicant viz. (i) Primary Hypertension assessed @30% for life, (ii) Bipolar Affective Disorder assessed @40% for life, and (iii) IGT assessed @20% for life and placed him at low medical category A4G4(P) for the said disabilities. The medical authority considered the disabilities of the applicant as neither attributable to nor aggravated by service.

12. The learned counsel for the respondents relied upon Rule 153 of the Pension Regulation for IAF, 1961 (Part-I) which stipulates that, the primary condition for the grant of disability pension is granted when the personnel is invalided out from service on account of the disability being attributable to or aggravated by Air Force service and is assessed at 20% or more. The learned counsel submitted that since the disability is neither attributable to nor

aggravated by service, hence the disability was rightly assessed as NANA.

ANALYSIS

13. 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 it is not in dispute that the applicant suffered with the said disabilities viz. (i) Primary Hypertension assessed @30% for life, (ii) Bipolar Affective Disorder assessed @40% for life, and (iii) IGT assessed @20% for life and placed him in low medical category A4G4(P) for the said disabilities. The medical authority considered all the disabilities of the applicant as neither attributable to nor aggravated by service.

14. To decide on the issue of attributability of these disabilities to military service. It is important to note that the applicant was a case of Alcohol Dependence Syndrome (ADS) vide AFMSF-15 dated 30.12.1999 with an advice to the applicant to abstain from alcohol. The applicant was put in low medical category CEE (T-24) for the ADS. The applicant was thereafter upgraded to medical category AYE for the ID Alcohol Dependence Syndrome vide AFMSF-16

dated 06.05.2002. It is further, important to note that the medical case sheet annexed with RMB dated 19.11.2015 reproduced herein below reads as under:-

"A detailed evaluation at the time revealed history of alcohol consumption with gradual development of craving and tolerance. He had been consuming nearly 360ml of alcohol daily by the time of his referral. "

which demonstrates that the applicant had been an alcoholic for a long period of time prior to the onset of all the three disabilities.

15. It is pertinent to mention herein that the available medical literature published on 19.02.2024 and accessed on 04.06.2024 at "**<https://www.mayoclinic.org/>** with the subject namely High Blood Pressure (hypertension)" enumerates various causes one of which shows hypertension can occur due to excess amount of consumption of alcohol. In so far as the disability ID IGT is concerned, the available medical literature published on 17.04.2012 and accessed on 04.06.2012 at "**<https://www.ncbi.nlm.nih.gov>** with the subject namely Alcoholism and Diabetes Mellitus" also provides that the primary reason for the occurrence of IGT or Diabetes Mellitus is consumption of excess amount of alcohol,

thereby, making a person prone to developing of IGT. In so far as the disability ID Bipolar Affective Disorder and its relationship with alcohol consumption is concerned, it is relevant to highlight the medical literature available in public domain published on 11.03.2024 and accessed on 04.06.2024 at <https://www.ncbi.nlm.nih.gov> with the subject namely Alcohol Dependence Syndrome with Bipolar Affective Disorder and Hypomanic Current Episode: case study" provides that alcohol abuse or dependence may alter the presentation of bipolar disorder, resulting in higher rates of certain symptoms such as mixed or dysphoric mania, rapid cycling, and impulsivity. Therefore, it is safe to say the consumption of excessive alcohol or dependence on it is one of the vital reasons for contracting all these disabilities by the applicant. Hence, it is safe to say that looking into the medical case sheet of the applicant and available medical literature referred herein above shows that occurrence of these disabilities and alcohol dependence are intertwined to each other making it probable enough to be easily susceptible to these disabilities.

16. Thus, it is safe to say that the applicant being negligent of his health led to the occurrence of the said disabilities and not due to performance of any military duty since the applicant suffered from the said disabilities after being detected with the ID Alcohol Dependence Syndrome. Therefore, no case is made out on the part of the applicant since the applicant failed to establish the causal connection between the said disabilities and military duty. The applicant has, also failed to bring on record any documentary evidence which could establish that the disabilities caused to the applicant was due to military service condition and therefore the said disabilities 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

17. We, thus, hold that the disabilities viz (i) Primary Hypertension assessed @30% for life, (ii) Bipolar Affective Disorder assessed @40% for life, and (iii) IGT assessed @20% for life has no causal connection with military service

and therefore, there is no merit in the case, the
OA 1173/2019 is thus dismissed.

Pronounced in the open Court on this day of 4 July,
2024.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (J)

/pranav/nmk