

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

OA 289/2019 with MA 1969/2020 & MA 784/2019

In the matter of :

Col Narender Bhushan (Retd.)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri O.S. Punia, Advocate

For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM :

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

ORDER

M.A. No. 1969 of 2020 :

Counter affidavit has been filed by the respondents. There being delay in filing the same, the instant application has been filed by the respondent seeking condonation of delay. Delay is condoned. The counter affidavit is taken on record. MA stands disposed of accordingly.

M.A. No. 784 of 2019 :

Vide this application, the applicant seeks condonation of 2235 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. 289 of 2019 :

The applicant, having been found medically and physically fit, was commissioned in the Indian Army on 14.06.1970. On superannuation, he retired from service on 28.02.2005 in low medical category S1H1A1P2(Permt)E1. The Release Medical Board (RMB) held on 08.09.2004 assessed the applicant's disability IHD (Anterior Myocardial Infarction) Post CABG @ 50% for life. The RMB held the disability of the applicant as 'aggravated by service and connected to service'.

2. The claim of the disability pension of the applicant was rejected by the respondents vide the impugned letter dated 12.04.2006. The applicant preferred the first appeal dated 12.09.2006 against rejection of his claim. The respondents ordered the conduct of First Appeal Medical Board vide letter dated 16.01.2007, which was held and the applicant appeared before the said medical board. Vide letter dated 29.03.2011, the respondents informed the applicant that the

committee has found that the appeal medical board has rightly held the disability of the applicant as Neither attributable to nor aggravated by military service and hence the first appeal of the applicant was rejected. Against this decision, the applicant preferred the second appeal dated 26.09.2011, which was also rejected by the respondents vide their letter dated 04.01.2013. Aggrieved by the same, the applicant filed the present OA seeking grant of disability pension.

3. Learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit medically and physically and no note was made in his medical record that the applicant was suffering from any disease at that time. The learned counsel contended that the disease suffered by the applicant caused due to severe service conditions and prolonged stress and strain sustained during the performance of day to day duties and the same put tremendous mental and physical pressure on the applicant and had impacted adversely on the health of the applicant and thus, in April, 1995, the applicant suffered from IHD and had to undergo CABG. The learned counsel

for the applicant submitted that the respondents have erred in ignoring the opinion of the initial categorisation medical board held in 1995 and the RMB held in September, 2004 that the onset of disease was as a consequence of stress and strain related to service.

4. Learned counsel for the applicant further submitted that the instant matter is squarely covered by the judgment of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316]** 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 were opined to have caused due to stress and strain of service. Learned counsel, therefore, prayed that the disability in question may be held as attributable to/aggravated by military service and that the disability pension may be granted to the applicant.

5. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since he retired from service on attaining the age of superannuation only and the assessment made by the RMB

is only recommendatory in nature and subject to review. Learned counsel further contended that the 1st Appeal Medical Board was held and on the recommendations of the said Board, the competent authority rejected the first appeal of the applicant as the disability was held as 'Neither Attributable to Nor Aggravated by Military Service'. Learned counsel further submitted that as the applicant's disability does not fulfil the conditions in terms of Regulation 53 of the Pension Regulations for the Army, 1961 (Part-I) of being assessed at 20% or more and also being held as attributable to or aggravated by military service, the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed.

6. The applicant has filed a rejoinder to the counter affidavit filed by the respondents. While reiterating the submissions already made, the learned counsel placed reliance on the judgement of Hon'ble Supreme Court in *Ex Sapper Mohinder Singh Vs. Union of India and others* and submitted that in the initial categorisation medical board and the RMB, the disability of the applicant has already been conceded as aggravated by military service due to stress and

strain of service. He submits that the applicant has never been supplied the Appeal Medical Board proceedings claimed to have been held. Therefore, in view of the above, the learned counsel submits that the OA deserves to be allowed.

7. We have heard the learned counsel for the parties and have gone through the records. We find that since the disability in this case has been assessed at 50%, the issue which needs to be considered is as to whether the disability of the applicant is attributable to or aggravated by military service or not.

8. It is an undisputed fact that at the time of joining the Indian Army on 14.06.1970, the applicant was found medically and physically fully fit and the present disability admittedly first occurred in April, 1995 i.e. after about 25 years of service, and at the time of retirement, the applicant was placed in low medical category S1H1A1P2(Permanent)E1.

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 for Casualty Pensionary Awards, 1982 and the General Rules of Guide to Medical Officers (Military Pensions), 2002 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. The Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Rajbir Singh [2015 (2) SCALE 371]** decided on 13.02.2015, after taking note of its judgement in the case of *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....."

11. In Para 47 of Chapter VI of the Guide to Medical Officers (Military Pensions) 2002, amended 2008 (hereinafter referred to as 'GMO (MP) 2008', various factors including prolonged stress and strain and physical hardship caused by serving in the field and high altitude areas have been given which cause heart diseases in army personnel. It would be

relevant to reproduce Para 47 of the GMO (MP) 2008, which is as under:-

"47. Ischaemic Heart Disease (IHD). IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the atheromatous plaque and a variable degree of occlusion of the coronary artery. A total occlusion results in myocardial infarction in the territory of the artery occluded. Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias. The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service....."

[Emphasis supplied]

12. It has already been observed by the Tribunal in large number of cases that armed forces services have their own pressure of rigorous military training and associated stress and strain of the service. It may also be taken into consideration that the most of the personnel of the armed

forces live without their family, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms, and all this affects their physical as well as mental health.

13. Moreover, in the present case, the categorisation medical board held in 1995 and the RMB held in 2004 have assessed the disability suffered by the applicant due to stress and strain of service. However, ignoring the opinion of the RMB, the respondents denied the initial claim of the applicant for grant of disability pension. It is evident from the Part V of the RMB proceedings that the disability of the applicant has been conceded as 'aggravated by service' and the reason of the same has been given as '*Due to stress and strain of military services*'. Then again in clause 4 of the Part V, to a question :

"4. In case of disability awarded Aggravation, whether the effect of such aggravation still persist ? If yes, whether the effects of aggravation will persist for a material period.

The Board answered as under :

"Yes. Due to stress and strain of military service."

In this case, we also find that the RMB was held on 08.09.2004 and the same has been approved on 13.09.2004 and the Confirming Authority has also confirmed the proceedings on 30.09.2004. In this backdrop, it is not clear as to what was the occasion for the respondents to conduct the appeal medical board. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in the case of **Ex Sapper Mohinder Singh Vs. Union of India & Ors. [Civil Appeal No. 104 of 1993]** decided on 14.01.1993, wherein the Hon'ble Apex Court has observed that the administrative authority cannot sit over the opinion of a medical board. The observations made in the judgment in the case of *Ex Sapper Mohinder Singh (supra)* being relevant is quoted below :

"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core."

In view of the decision of the Hon'ble Supreme Court in *Ex Sapper Mohinder Singh (Supra)*, we are of the considered view that the claim for disability pension was wrongly interfered with by the administrative authority and is unsustainable in law.

14. Furthermore, aggrieved by the denial of disability pension, the applicant preferred the first appeal and in response to the first appeal, the respondents ordered for the conduct of 1st Appeal Medical Board and thereafter rejected the appeal holding that the disability of the applicant was held as neither attributable to nor aggravated by military service. However, the respondents have not placed any opinion/report of the 1st Appeal Medical Board (AMB) to show the reasons for differing with the opinion of the RMB and by just stating that the Appeal Medical Board has opined the disability as neither attributable to nor aggravated by service, the contentions of the respondents cannot be accepted.

15. In this case, once the RMB proceedings have already been approved and confirmed by the competent authority in September, 2004, no reason has been assigned by the respondents to order conduct of the appeal medical board,

which, in a way, can be said to be a re-assessment of the disability of the applicant. With regard to this aspect, it would be appropriate to refer to GOI, MOD letter No 1(2)/97/D(Pen-C dated 07.02.2001, which provides that with regard to re-assessment of a disability, in case of disability being of permanent in nature, the decision once arrived at will be final and for life and no periodical review would be needed, unless the individual requests for the same.

16. 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 'IHD (Anterior Myocardial Infarction) Post CABG' assessed by the RMB @ 50% for life with benefit of rounding off from the date of retirement.

17. Therefore, the OA is allowed. The respondents are directed to grant the disability element of pension to the applicant @ 50% for life, which is directed to be rounded off to 75% for life with effect from the date of retirement i.e. 28.02.2005, 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 after a considerable delay, 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. 21.02.2019.

18. Accordingly, 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.

19. In view of the above, pending MAs, if any, stand closed. There is no order as to costs.

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

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

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