

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

O.A. No. 1769 of 2019
with
M.A. No. 2671 of 2019

In the matter of :

Ex Sub (Hony Lt) Vishwanath Thakur ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Manoj Kr. Gupta, Advocate

For Respondents : Shri Shyam Narayan, Advocate

CORAM:

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

ORDER

M.A. No. 2671 of 2019 :

Vide this application, the applicant seeks condonation of 4545 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. 1769 of 2019 :

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, who, seeks disability element of pension for the disability of Primary Hypertension with rounding off benefits and also pay-revision in the rank last held by the applicant i.e. Hony Lt, instead of Sub, along with arrears.

2. Briefly stated that facts of the case are that the applicant, having been found medically and physically fully fit in SHAPE-1, was enrolled in the Indian Army on 29.11.1978. He was discharged from service on 30.11.2006 on fulfilling the term of engagement being in low medical category P3 (Permt). The Release Medical Board (RMB) held in **September, 2006** assessed the applicant's disabilities i.e. (a) PRIMARY HYPERTENSION @ 30% and (b) PIVD L₅S₁ (OPTD) @ 20% both for life with composite degree of disablement @ 50% for life. While the second disability i.e. PIVD L₅S₁ has been held as 'Aggravated by service', the other disability i.e. Primary Hypertension' was opined as 'neither attributable to nor aggravated by military service.

3. Eased on the recommendations of the RMB, the applicant was granted disability element of pension with regard to the disability (b) PIVD L₅S₁, as the same was held as 'aggravated by military service' by RMB from 01.12.2006 for life. However, the disability element of pension was denied for primary hypertension being assessed as neither attributable to nor aggravated by service. Aggrieved by the denial of disability pension for primary hypertension, the applicant preferred an appeal dated 18.08.2019. The same was not processed by the respondents on the ground of delay. In the meantime, the applicant sent an application dated 04.11.2008 seeking revision of pension for the disability, PIVD L₅S₁, on the basis of the last rank held by him i.e Hony Lt., but the same was rejected on the ground that at the time of onset of this disability, he was a JCO and thus he was not entitled to the said benefit.

4. Learned counsel for the applicant submitted that since the applicant was found mentally and physically fully fit at the time of his enrolment and there was no note made in his service documents to the effect that he was suffering from any disease at that time and at the time of his discharge, the

applicant was placed in low medical category P2(Permanent), the disability should be considered as attributable to and aggravated by military service. Learned counsel further submitted that the disability ID primary hypertension was diagnosed after 27 years of stressful service and both the disabilities have been detected together, but only PIVD was declared aggravated by service.

5. Placing reliance on various judgments of the Hon'ble Supreme Court including **Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]** and **Union of India and Ors. Vs. Rajbir Singh [(2015) 12 SCC 264]**, learned counsel contended that assessment of primary hypertension as neither attributable to nor aggravated by service is against the aforesaid judgments of the Apex Court, which have been followed in large number of cases by the Tribunal while granting disability pension for primary hypertension.

6. Learned counsel further submitted that when the applicant was enrolled in the service, he was found mentally and physically fit for service and there is no note in the service documents that he was suffering from any disease at that time, thus any disability suffered by him during service,

the disability is presumed to be occurred due to service conditions and thus the same ought to have been considered as attributable to service. Learned counsel pleaded that the respondents' action in rejecting the claim of disability pension with regard to the first disability i.e. Primary Hypertension, is arbitrary, unjustified and unlawful.

7. Learned counsel for the respondents, on the other hand, submitted that the disability of the applicant i.e. primary hypertension assessed @ 30% for life and the competent authority has rejected the claim of the applicant on the ground that the disability is neither attributable to nor aggravated by the military service being constitutional disorder as held by RMB, and thus, in terms of Para 179 of the Pension Regulations for the Army, 1961 (Part-1), the applicant is not entitled for grant of disability element of the disability pension with regard to primary hypertension.

8. We have heard the learned counsel for the parties and have gone through the records. The issue which is to be considered in this case is whether the disability of Primary Hypertension of the applicant can be held attributable to and/or aggravated by military service ?

9. The law on the point of attributability of a disability is already settled by the Hon'ble Supreme Court in the case of **Dharanvir Singh Vs. Union of India and others [(2013) 7 SCC 316]**, which has been followed in various subsequent decisions of the Hon'ble Supreme Court and in the large number of orders passed by the Tribunal, wherein the Apex Court had considered the question with regard to the disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers, 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 to be 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. Relevant paras are reproduced hereunder :

"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. It has already been observed by the Tribunal in large number of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service and that such a discrimination between postings in peace area or field/HAA/CI Ops areas to say there is no stress and strain of service in peace area should not be considered for the purpose of granting of disability pension. It may also be taken into consideration that the most of the personnel of the armed forces, during their service, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. A Coordinate Bench of this Tribunal in the case of **Col R.R. Panigrahi Vs. Union of India & Ors. [O.A. No. 1825 of 2018]** decided on 01.08.2019, considered the issue with regard to the onset of the disease of Primary Hypertension was in peace area with no history of service in Field/HAA/prolonged afloat service, and allowed the OA.

11. Admittedly, the applicant was enrolled in the service in November, 1978 and the disability first occurred after more than 27 years of service i.e. in April, 2006. There is no note made in his medical documents that he was suffering from any disease at the time of joining the service. There has not been any note regarding his leading a poor lifestyle and family history etc. We are, therefore, of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of the above judgment and settled law on the point of attributability/aggravation, the disability i.e. Primary Hypertension of the applicant should be held attributable to/aggravated by the military service.

12. In light of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled to disability element of pension in respect of disability i.e. Primary Hypertension also. Accordingly, prayer (a) of the OA made by the applicant is allowed.

13. As regards the other prayer (b) for issue of direction to the respondents to re-calculate the disability pension by considering the rank of the applicant of Hony Lt instead of

Subedar, we have seen the documents available on record and we do not find any substantial evidence in this regard from either side. Accordingly, we direct the respondents to verify from the records with regard to the rank held by the applicant and if any error is found in calculating the disability pension earlier, then the disability pension may be re-calculated qua the rank at which the applicant is entitled to receive his pension and therefore the disability pension.

14. The OA 1769 of 2019 stands disposed of in terms of the above. The applicant is entitled to disability element of pension in respect of Primary Hypertension also and both the disabilities were already assessed compositely @ 50% by the RMB, which is to be rounded off to 75% 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 was already in receipt of the disability pension in respect of PIVD with the broad-banding benefit to 50%, therefore, the respondents are now directed to grant disability pension to the applicant @ 50% which is rounded off to 75% for life from the date of

discharge after adjusting the amount of disability pension already paid to the applicant.

15. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four 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.

16. There is no order as to costs.

Pronounced in open Court on this 12th day of July, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN R.M. HARIZ]
MEMBER (A)

/ng/