

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

O.A. No. 1008 of 2023
with
M.A. No. 4310 of 2023

In the matter of :

Col Amita Jain (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri S.S. Pandey, Advocate

For Respondents : Shri K.K. Tyagi, Sr. CGSC

CORAM:

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

ORDER

M.A. No. 4310 of 2023 :

Vide this application, the respondents sought for condonation of 07 days' delay in filing the accompanying counter affidavit. In view of the averments made in the application, the delay is condoned and the counter affidavit is taken on record.

MA stands disposed of accordingly.

O.A. No. 1008 of 2023 :

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter

referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

(a) Call for the records including the RMB proceedings, based on which the RMB has held the disability of the applicant for Primary Hypertension as not attributable and also assessed the disability of Fracture base 5th Metatarsal (Lt) to the extent of 10% instead of 20% after the RMB found such disability attributable to service as well as the records based on which the administrative authorities passed order dated 29.11.2021 as forwarded vide letter dated 22.12.2021 holding all the three disabilities as NANA thereby even denying disability pension which the applicant was otherwise entitled based on such RMB and thereafter passing impugned order dated 13.05.2022 and dated 28.12.2022 vide which the first and second appeal as filed by the applicant was rejected and thereafter quash the same.

(b) Direct the respondents to pay disability pension to the applicant for the disability held to be aggravated by service and assessed 20% for Bronchial Asthma by the RMB which is required to be broad banded to 50% with effect from the date of retirement with further directions to pay the arrears of such disability pension along with arrears with an interest @ 18% as expeditiously as possible.

(c) Further, direct the respondents to pay the disability pension even for other two disabilities for hypertension and Fracture Base of 5th Metatarsal (LT) assessed at 50% and the same be broad banded to 75% for all three disabilities with effect from the date of retirement along with the arrears of the disability pension with interest @18% pa to be compounded quarterly with exemplary cost from the date of retirement till date of payment.

(d) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.

2. The facts of the case, in brief, are that the applicant was commissioned in the Indian Army on 12.01.1999 and was released from service on 15.03.2021, at her own request in low medical category S1H1A3P2E1(P). Before her release, the applicant was brought before the duly constituted Release Medical Board (RMB) held on 09.02.2021 which assessed her disabilities (a) BRONCHIAL ASTHMA @ 20%; (b) PRIMARY HYPERTENSION @ 30%; and (c) FRACTURE BASE OF 6TH METATARSAL (LT) @ 10% with composite assessment of disabilities @ 50% for life. While the disability ID (a) and (c) were conceded as 'Aggravated by military service' and 'Attributable to military service', respectively, the disability ID (b) has been considered as 'neither attributable to nor aggravated by military service' (NANA). The net assessment qualifying for disability pension with duration is '28 - 30% for life'.

3. The initial claim of the applicant for disability pension was rejected by the respondents vide letter dated

29.11.2021 as forwarded vide letter dated 22.12.2021. The applicant preferred her first appeal dated 31.01.2022 for grant of disability pension for all the disabilities, which has been rejected by the respondents vide letter dated 13.05.2022. Against this, the applicant preferred the second appeal dated 29.07.2022, however, the same was also rejected by the competent authority vide letter dated 28.12.2022. Aggrieved by the same, the applicant has filed the present OA.

4. Learned counsel for the applicant submitted that at the time of joining the Army, the applicant was declared medically and physically fully fit and no note was made in her medical record to the effect that the applicant was suffering from any disease at that time and, therefore, any medical disability contracted by her during the course of her service is to be treated as attributable to and aggravated by the stress and strain of service. Learned counsel submitted that in the year 1999, the applicant was posted to Rajouri 150 GH, a counter insurgency area and the applicant handled mass casualties nearing about 700-800 daily, as trauma surgeon during Operation Vijay and during

P

that period, she developed symptoms of asthma, which with during the passage of time in service got aggravated; that on 16.04.2016, while posted in MH, Meerut, she was diagnosed with 'Bronchial Asthma' and was placed in low medical category P3 (T-24).

5. Learned counsel further submitted that on 16.08.2018, the applicant was detected suffering from primary hypertension and later in July, 2019, the applicant was downgraded to permanent low medical category for the said two disabilities. It was further submitted on behalf of the applicant that on 20.11.2020, while carrying out her duties in Base Hospital Delhi Cantt at Surg I Ward, while performing ward rounds, sustained accidental twisting of left foot and suffered fracture base of 5th metatarsal left as shown in the X-ray report. Learned counsel submitted that a Court of Inquiry was conducted which held that the injury was 'attributable to service'.

6. Learned counsel for the applicant contended that the applicant had served for almost 24 years in different field and peace areas as well as the UN Mission in Congo in 1994; that even after having diagnosed with the

disabilities/injury, the applicant continued to perform stressful and strenuous services, owing to nature of her duty, due to which the medical condition of the applicant got aggravated and the applicant therefore sought premature retirement from service. Learned counsel referred to Rules 5 and 14(b) of the Entitlement Rules, 1982 to submit that when no note was made about the disease at the time of joining the service, the deterioration of health in the course of service is to be presumed to be due to service conditions; Rule 9 to submit that the onus of proof of condition of non-entitlement is not on the claimant but on the respondents; Rule 19 thereof to contend that if the worsening of a condition persists till the time of discharge, aggravation is to be accepted and also referred to various rules and regulations in support of the case of the applicant. Learned counsel submits that the respondents while rejecting the first and second appeal have wrongly considered the disabilities as NANA and moreover, the net assessment of the disabilities has been made as 28-30% for life in the RMB and he, therefore, prayed that all the disabilities in question may be held as attributable to and

aggravated by military service and the disability of Fracture of 5th Metatarsal (Lt) be assessed @ 20% and disability pension be granted to the applicant.

7. Learned counsel placed reliance on the judgments of the Hon'ble Supreme Court including **Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]** and **Union of India & Anr. Vs. Rajbir Singh [2015 (2) SCALE 371]** and various orders of the Tribunal, wherein based on the ruling in *Dharamvir Singh (supra)*, disability pension was allowed to the claimants, and the orders passed by the Tribunal. It has been submitted on behalf of the applicant that the respondents' action in denying the disability pension is unjustified and unlawful, when these disabilities occurred during the military service and got worsened while performing military duties and 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. Learned counsel further submitted that the disabilities Bronchial Asthma and Fracture Base of 5th Metatarsal (Lt) have been conceded as 'aggravated by military service' and 'attributable to military service' respectively and relying on judgment of the Hon'ble Supreme Court in the case of **Ex Sapper Mohinder Singh Vs. Union of India and Another** [Civil Appeal No. 164 of 1993] decided on 15.01.1993, it was contended that the higher formation cannot overrule the opinion of a medical board and thus the respondents' denial of disability pension to the applicant is unlawful and unjustifiable. Hence in view of the law laid down by the Hon'ble Apex Court, the opinion of the RMB, the decision of the respondents may be set aside and the applicant may be granted disability element of pension.

8. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, being an expert body, after thorough examination of the applicant found the disability as "Neither Attributable to Nor Aggravated by Military Service" on the ground that the same is a hereditary progressive disorder and

not connected with service and that the applicant was provided treatment without any delay. Learned counsel further submitted that the SACP, after thorough examination of the service/medical documents of the applicant and in light of the relevant rules and regulations, rejected the second appeal of the applicant citing reasons to hold the disability as NANA and, therefore, the applicant is not entitled to get disability pension. Learned counsel prayed that the OA may be dismissed.

9. We have heard the learned counsel for the parties and have gone through the records.

10. The law on the point of attributability of a disability is already settled by the Hon'ble Supreme Court in the case of **Dharamvir 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."

11. 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.....”

12. It is an undisputed fact that the RMB has opined the applicant's disabilities 'Bronchial Asthma' as 'aggravated by military service' and 'Fracture Base of 5th Metatarsal (Lt)' as 'attributable to military service' due to stress and strain of service as is evident from the RMB proceedings i.e. Part-VII Opinion of the Medical Board. However, the said opinion of the RMB has been overruled by the competent authority of the respondents and denied the disability pension to the applicant. The issue in question is no more *res integra*. The same is squarely covered by the decision 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 without physical medical examination of the patient, the administrative authority/higher formation 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.”

13. 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 opinion of the RMB was wrongly interfered with by the administrative authority and is unsustainable in law.

14. As regards the disability ID 'Primary Hypertension', we may refer to Para 43 of the Chapter VI of the 'Guide to Medical Officers (Military Pensions), 2008, wherein it is provided as under :

“43. Hypertension - The first consideration should be to determine whether the hypertension is primary or secondary. If (e.g.

Nephritis), and it is unnecessary to notify hypertension separately.

As in the case of atherosclerosis, entitlement of attributability is never appropriate, but where disablement for essential hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. However, in certain cases the disease has been reported after long and frequent spells of service in field/HAA/active operational area. Such cases can be explained by variable response exhibited by different individuals to stressful situations. Primary hypertension will be considered aggravated if it occurs while serving in Field areas, HAA, CIOPS areas or prolonged afloat service."

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. Moreover, in a recent judgment dated 20.08.2024 in **Union of India and others Vs. Ex Gnr Dhiraj Kumar & Anr. [CWP-19136-2024 (O&M)]**, the Hon'ble High Court of Punjab and Haryana upheld the decision of the AFT granting disability pension for hypertension.

15. So far as the onset of the disabilities of the applicant is stated to have arisen in peace area/station, 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.

16. Admittedly, the applicant was commissioned in the Indian Army in January, 1999 and the disabilities have occurred after more than 17-19 years long of service. Therefore, in view of the settled law on the point of attributability/aggravation, we hold that the disabilities suffered by the applicant as attributable to and aggravated by the military service. As the disabilities Bronchial Asthma, Primary Hypertension and Fracture Base of 5th Metatarsal

(Lt) have been assessed by the RMB @ 20%, 30% and 10% respectively, in terms of the Para 48/173 of the Pension Regulations for the Army, 1961, the applicant is entitled to disability element of pension in respect of the two disabilities i.e. Bronchial Asthma and Primary Hypertension only along with benefit of rounding off, the disability of Fracture Base of 5th Metatarsal having been assessed at less than 20%.

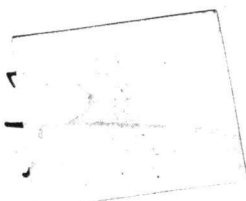
17. In view of the aforesaid judicial pronouncements and the parameters referred to above, O.A. No. 1008 of 2023 is allowed to the extent that the applicant is entitled for the disability element of pension in respect of the two disabilities i.e. Bronchial Asthma @ 20% and Primary Hypertension @ 30% and the composite assessment of same is being calculated as per MoD letter No. 16036/RMB/IMB/DGAFMS/MA (pens) dated 14.12.2009 as under :

Disability-Primary Hypertension = 30% (disability with maximum percentage)

Disability-Bronchial Asthma (100-30) = $70 \times 20/100 = 14\%$

Composite Assessment = $30 + 14 = 44\%$

18. The respondents are directed to grant the disability element of pension to the applicant @ 44% for life which is directed to be rounded off to 50% for life, with effect from the



date of retirement 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.

19. 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.

20. There is no order as to costs.

Pronounced in open Court on this 27th day of September, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/ng/