

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

O.A. No. 158 of 2019
with
M.A. No. 570 of 2019

In the matter of :

Ex Hav Clk (SD) Laxman Singh Mehta ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Virender Singh Kadian, Advocate

For Respondents : Shri Arvind Patel, Advocate

CORAM :

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

O R D E R

M.A. No. 570 of 2019 :

Vide this application, the applicant seeks condonation of 430 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. 158 of 2019 :

The applicant, having been found medically and physically fit, was enrolled in the Indian Army on 23.10.1982. He was discharged from service on 31.03.2000 and was granted service pension. Thereafter, the applicant was re-enrolled in the Defence Security Corps (DSC) on 30.10.2000 and discharged from that service on 31.10.2015. The Release Medical Board (RMB) held in September, 2015 assessed the applicant's disabilities (a) CAD-SVD S/P PTCA TO LCX (2.25x14 ENDEAVOUR RESOLUT (DES)' @ 50% for life and (b) DIABETES MELLITUS TYPE - II @ 20% for life, with composite assessment of disablement @ 60% for life. However, both the disabilities were held as 'neither attributable to nor aggravated by military service' (NANA), based on which, the disability pension was denied to the applicant. The applicant, aggrieved by non-grant of extension beyond 29.10.2015, filed O.A. No. 894 of 2015 seeking cancellation of the discharge order. However, later the said OA was allowed to be withdrawn by the applicant on 27.04.2017 with liberty to file a fresh application for seeking disability pension. The applicant thereafter served an

Appeal-cum-Legal Notice dated 08.10.2018, which was rejected vide letter dated 29.10.2018, impugned herein, on the ground that the disabilities were neither attributable to nor aggravated by military service. Hence, the applicant filed the present OA for grant of disability pension.

2. 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 to the effect that the applicant was suffering from any disease at that time. The learned counsel explained about the harsh, stressful and challenging conditions of service faced by the applicant during his service tenure in peace/field postings which put tremendous mental and physical pressure on the applicant and had impacted adversely on the health of the applicant and thus, in May, 2012, the applicant suffered from CAD-SVD and remained under treatment at INHS Asvini, Mumbai for two months. Learned counsel for the applicant also submitted that in December, 2012, the applicant was diagnosed with Diabetes Mellitus Type II and was treated conservatively.

3. Learned counsel for the applicant further submitted that the instant matter was squarely covered by a catena of judgments of the Hon'ble Supreme Court including **Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316]**, **Union of India & Anr. Vs. Rajbir Singh [2015 (2) SCALE 371]** and the orders passed by the Tribunal and submitted that the respondents' action in denying the disability pension was unjustified and unlawful, when the disabilities recorded by the RMB occurred during the military service and were caused due to stress and strain of service. He referred to Rules 5 and 14(b) of the Entitlement Rules, 1982 to submit that the deterioration of health was to be presumed to be due to service conditions; Rule 19 thereof to contend that if the worsening of a condition persists till the time of discharge, aggravation was to be accepted and again referred to various rules and regulations in support of the case of the applicant. Learned counsel, therefore, prayed that the disabilities in question may be held as attributable to/aggravated by military service and that the disability pension may be granted to the applicant.

4. *Per contra*, the learned counsel for the respondents contended that the applicant was not entitled to the relief claimed since the RMB, being an Expert Body, found both the disabilities "Neither Attributable to Nor Aggravated by Military Service" on the ground that no evidence of prolonged exceptional stress and strain related to the onset of disease was found in respect of the ID (a) CAD-SVD and the other ID (b) Diabetes Mellitus Type II, being a lifestyle disorder and that the applicant had been managed without any delay and appropriately at the hospitals. Learned counsel submitted that as the applicant's disabilities do not fulfil the necessary conditions for being eligible for disability pension in terms of Regulation 179 of the Pension Regulations for the Army, 2008 (Part-I) of being more than 20% and being attributable to or aggravated by military service, the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed.

5. We have heard the learned counsel for the parties and have gone through the records. We find that since both the disabilities in this case are assessed at more than 20% individually, the issue which needs to be considered is as to

whether the disabilities of the applicant are attributable to or aggravated by military service or not.

6. It is an undisputed fact that at the time of joining the Indian Army on 23.10.1982, the applicant was found medically and physically fully fit and was in SHAPE-1 and the present disabilities have admittedly first occurred in May, 2012 for ID (a) CAD-SVD and December, 2012 for ID (ii) Diabetes Mellitus Type-II, and at the time of discharge, the applicant was placed in low medical category S1H1A1P2E1.

7. 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."

8. 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....."

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

10. In the present case, although the disability was noted when the applicant was posted in peace area, the probability of earlier service in field and high altitude areas having contributed to mental stress and strain resulting in CAD cannot be overlooked. Moreover, 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. 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. Admittedly, the applicant was enrolled in October, 1982 and the disabilities have first started after more than 29 years of Army service i.e. in the

year 2012. There is no record to show that the applicant has suffered CAD due to hereditary and unhealthy life style. Thus, we hold that the disability ID CAD-SVD S/P PTCA to LCX is attributable to and aggravated by military service.

11. As regards the disability ID (ii) Type II Diabetes Mellitus, as per the amendment to Chapter VI of 'Guide to Medical Officers (Military Pensions), 2008, Para 26 thereof, Type 2 Diabetes Mellitus is to be conceded as aggravated if the onset occurs while serving in Field/CIOPS/HAA/prolonged afloat service and having been diagnosed as 'Diabetes Mellitus Type-II' who are required to serve in these areas. Furthermore, *inter-alia*, stress and strain because of service reasons are stated therein to be known factors which can precipitate diabetes or cause uncontrolled diabetic state. Specific relevant portions of Para 26, Chapter VI of the GMO (MP), 2008, read as under:

"26. Diabetes Mellitus

This is a metabolic disease characterised by hyperglycemia due to absolute/relative deficiency of insulin and associated with long term complications called microangiopathy (retinopathy, nephropathy and neuropathy) and macroangiopathy.

There are two types of Primary diabetes, Type 1 and Type 2. Type 1 diabetes results from severe and acute destruction of Beta cells of pancreas by autoimmunity brought about by various infections including viruses and other environmental toxins in the background of genetic susceptibility. Type 2

diabetes is not HLA-linked and autoimmune destruction does not play a role.

Secondary diabetes can be due to drugs or due to trauma to pancreas or brain surgery or otherwise. Rarely, it can be due to diseases of pituitary, thyroid and adrenal gland. Diabetes arises in close time relationship to service out of infection, trauma, and post surgery and post drug therapy be considered attributable.

Type 1 Diabetes results from acute beta cell destruction by immunological injury resulting from the interaction of certain acute viral infections and genetic beta cell susceptibility. If such a relationship from clinical presentation is forthcoming, then Type 1 Diabetes mellitus should be made attributable to service. Type 2 diabetes is considered a life style disease, stress and strain, improper diet non-compliance to therapeutic measures because of service reasons, sedentary life style are the known factors which can precipitate diabetes or cause uncontrolled diabetic state.

Type 2 Diabetes Mellitus will be conceded aggravated if onset occurs while serving in Field, CIOPS, HAA and prolonged afloat service and having been diagnosed as Type 2 diabetes mellitus who are required serve in these areas.

Diabetes secondary to chronic pancreatitis due to alcohol dependence and gestational diabetes should not be considered attributable to service."

Further, the Hon'ble Supreme Court also in the case of **Commander Rakesh Pande Vs. Union of India & Ors.** [Civil Appeal No. 5970 of 2019] decided on 28.11.2019, has upheld the decision of the Armed Forces Tribunal granting disability pension in respect of diabetes to the applicant.

12. 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

both the disabilities i.e. CAD-SVD S/P PTCA TO LCX @ 50% for life and 'Diabetes Mellitus Type-II @ 20% for life, compositely assessed @ 60% for life with benefit of rounding off from the date of discharge.

13. Therefore, the OA is allowed. The respondents are directed to grant the disability element of pension to the applicant @ 60% which is directed 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 has approached the Tribunal belatedly, 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. 02.01.2019.

14. 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.

15. In view of the above, pending MAs, if any, stand closed.

There is no order as to costs.

Pronounced in open Court on this 7th day of
March, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/ng/