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

O.A. No. 409 of 2019
with
M.A. No. 958 of 2019

In the matter of :

Ex Hav Ranjit Singh ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Shri U.S. Maurya, Advocate

For Respondents : Shri Rajeev Kumar, 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. 958 of 2019 :

Vide this application, the applicant seeks condonation of 3640 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 accordingly.

O.A. No. 409 of 2019 :

The present application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant who is aggrieved by the impugned order bearing No. PEN GP/9511655H/DP/124 dated 31.08.2009 rejecting the claim of the applicant for the grant of disability pension for 'Mitral Valve Prolapse' which was opined as neither attributable to nor aggravated by military service by the medical authority.

2. Briefly, the facts of the case are that the applicant was enrolled in the Indian Army on 25.09.1991 and was discharged from service on 30.06.2008 being in low medical category. Before his discharge, the applicant was brought before the Release Medical Board (RMB) held on 22.01.2008, which assessed the disability of the applicant i.e. MITRAL VALVE PROLAPSE @ 20% for life. However, the disability was opined as neither attributable to nor aggravated by military service. Based on the same, the applicant was denied disability pension.

3. The applicant's claim for grant of disability pension was rejected by AEC Records vide letter dated 31.08.2009 and vide letter dated 26.09.2009 the applicant was informed about the

decision with instructions to prefer first appeal, if not satisfied with the decision. It is the case of the applicant that he made several correspondences with the respondents for grant of disability pension between 2009 and 2018, but in vain. Aggrieved by this, the applicant sent letter dated 20.08.2018 to AEC Records, however, when no reply was received thereto, the applicant filed the present OA seeking disability pension.

4. Learned counsel for the applicant submitted that since the applicant was found fully fit, mentally and physically at the time of his enrolment and there was no note in his service documents to the effect that he was suffering from any disease at that time, his disability should be considered as attributable to military service and since the applicant was discharged in medical category lower than that in which he was recruited, he should be granted disability pension for life. He further submitted that as the disability of the applicant had occurred while on duty, there is a causal connection between service of the applicant due to stress and strain of service. Learned counsel further stated that the RMB has erred in considering the disability as neither attributable to

nor aggravated by service as the disability has occurred while in service.

5. Learned counsel further submitted that while denying the disability pension, the respondents failed to appreciate the provisions contemplated under Rules 5 and 14(b) of the Entitlement Rules for Casualty Pensionary Awards, 1982 (hereinafter referred to as 'Entitlement Rules, 1982'), which provide that in case of discharge from service in low medical category, if no note is on record at the time of joining of service, the deterioration in health is to be presumed due to service conditions. The learned counsel further relied on various provisions of the Entitlement Rules, 1982 to submit that any disease contracted during service, would be presumed to be attributable to service and worsening of the same during service would be treated as aggravated by military service and onus to prove otherwise lies with the respondents only.

6. The 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]***, ***Union of India***

& Ors. Vs. Rajbir Singh ***[(2015) 12 SCC 264]***, ***Union of India & Ors. Vs. Angad Singh Titaria*** ***[(2015) 12 SCC 257]*** and the orders passed by the Tribunal 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 was caused due to stress and strain of service. In *Dharamvir Singh (supra)*, the Hon'ble Supreme 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 and the General Rules of Guidance to Medical Officers 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 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. 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.

7. *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, found the disability in question i.e. Mitral Valve Prolapse as "Neither Attributable to Nor Aggravated by Service". Learned counsel contended that in view of Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I), which provides that the disability pension is granted when the disability should be either attributable to or aggravated by service and minimum assessment thereof is mandatorily required to be 20% or more and hence, the OA deserves to be dismissed.

8. We have heard the learned counsel for the parties and have gone through the records. We find that the issue which needs to be considered is as to whether the disability of the applicant i.e. Mitral Valve Prolapse is attributable to or aggravated by military service or not.

9. In the instant case, it is an undisputed fact that at the time of joining the Indian Army on 25.09.1991, the applicant was found medically and physically fully fit and the disability in question has admittedly occurred during service and at the time of discharge, the applicant was in the medical category lower than in which he was recruited.

10. As regards the disability 'Mitral Valve Prolapse', it would be helpful to refer to Paras 83 of the Guide to Medical Officers (Military Pensions), 2002 amendment in 2008 (hereinafter referred to as 'GMO (MP) 2008') for determining the attributability/aggravation of the disability by service. The same reads as under:-

> ***"83. <u>Valvular Heart Disease.</u> The principal causes of valvular heart disease are Rheumatic carditis, other causes being congenital, ischemic heart disease, infective endocarditis and cardiomyopathy. It takes several years for valvular disease to develop from the onset of rheumatic fever. Attributability or aggravation can be conceded by judging the merit of each case and also considering the primary disease. Mitral valve prolapse (floppy mitral valve) is commonly detected in Armed Forces. It is primarily a congenital abnormality. Hence it will be conceded as neither attributable nor aggravated by military service."***

With regard to congenital heart disease, Para 22 of the GMO (MP) 2008 can also be relied upon, which reads as under:-

> ***"22. <u>Congenital Heart Disease</u>. It has been routinely observed that cases of congenital heart diseases like atrial septal defect/Mitral valve prolapse having escaped detection at the time of recruitment become symptomatic and detected very late in service. These will be conceded as neither attributable nor aggravated by military service."***

11. From the aforesaid provisions, it is clear that Mitral Valve Prolapse is a congenital heart disease detection of which could escape the medical examination on joining the service and this may be detected very late in service. In view of this, it is apparent that the disability of the applicant has no causal connection between the said disability and the military service since the applicant's disability is congenital which has no relationship with the performance of any military duty. The RMB has, therefore, rightly assessed the disability of the applicant i.e. Mitral Valve Prolapse, as neither attributable to nor aggravated by service. In view of this, the verdict of Hon'ble Supreme Court in *Dharamvir Singh (supra)* and other cases

relied upon with regard to this disability will not benefit the applicant.

12. In view of the aforesaid discussion, since the disability 'Mitral Valve Prolapse', has no causal connection with the military service, it is, therefore, not attributable to or aggravated by service and thus the applicant is not entitled to disability pension for this disability.

CONCLUSION

13. With the aforesaid, having no case made out, the OA stands dismissed.

14. Pending MAs, if any, stand closed accordingly. No order as to costs.

Pronounced in open Court on this 4th day of March, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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