

COURT NO. 2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No 1052/2019 WITH MA 1727/2019

Ex DFR Ram Karan Ahlawat

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate

For Respondents : Mr. Arvind Patel, Advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE LT GEN C P MOHANTY, MEMBER (A)

O R D E R

MA 1727/2019

This is an application filed under Section 22 of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of **4290** days in filing the present OA in view of the judgements of the Hon'ble Supreme Court in the matter of **Union of India & Ors. v. Tarsem Singh [2009 (1) AISLJ 371]** and in **Ex. Sepoy Chain Singh v. Union of India & Ors. [Civil Appeal No. 30073/2017]** and the reasons mentioned, the MA 1727/2019 is allowed despite opposition on behalf of the Respondents and the delay of **4290** days in filing the OA 1052/2019 is thus condoned. The MA is disposed accordingly.

2. Invoking the jurisdiction of this 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) Quash and set aside impugned letter no 1078128N/DP/Pen dated 13.05.2019, and/or

(b) To direct the respondents to treat the disability of the applicant as attributable to/aggravated by military service and grant disability element of pension from the date of retirement of the applicant along with the benefit of broadbanding, and/or

(c) To direct the respondents to pay the due arrears of disability element of pension with interest @ 12% p.a. from the date of retirement with all the consequential benefits.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.”

BRIEF FACTS

3. The applicant 1078128N Ex DFR Ram Karan Ahlawat was enrolled in the Armoured Corps

on 30.09.1983 and discharged from service on 30.09.2007 (AN) under Army Rule 13(3) Item III (i) on completion of service limit in Low Medical Category E3 (P) for the diagnosis 'Maculopathy with Lenticular opacities both eyes' with a qualifying service of 24 years and 01 day.

4. The Release Medical Board (RMB) of the applicant was held at Military Hospital, Jodhpur on 09.07.2007 wherein his disability 'Maculopathy with Lenticular opacities both eyes' was considered as neither attributable nor aggravated by service with 20% disability for life long, and net assessment qualifying for disability pension was marked at NIL for life.

5. The claim of the applicant for grant of disability pension was rejected by the competent authority and the same was communicated to the applicant by Armoured Corps Records vide letter no 1078128N/DP/Pen dated 13.11.2007. Thereafter, the applicant forwarded an application under Right to Information Act, 2005 dated 21.12.2018 seeking information/documents, which were provided to him by Armoured Corps Records vide letter no.

1078128N/RTI/SR/2019/NER dated 22.01.2019. Later on, the applicant filed an appeal-cum-representation dated 13.02.2019 through his legal counsel to the Armoured Corps Records for grant of disability element of pension, which was replied by the Armoured Corps Records letter no. 1078128N/DP/Pen dated 13.05.2019 rejecting his appeal-cum-representation being time barred. Aggrieved by the response of the respondents, the applicant has filed the present original application. In the interest of justice, we take up the OA in accordance with Section 21(1) of the Armed Forces Tribunal Act, 2007 for consideration.

CONTENTIONS OF THE PARTIES

6. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. UOI & Ors.*** [2013 (7) SCC 36], the learned counsel for the applicant submitted that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Indian Army at various places in different environmental and service conditions in his prolonged service and thus thereby, any disability that arose during his service has

to be deemed to be attributable to or aggravated by military service. The learned counsel for the applicant also placed reliance on the judgment 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 to seek the broadbanding of the disability element from 20% to 50% for life.

7. Per contra, while the learned counsel for the respondents, has not disputed the facts of the case regarding the disability, he highlighted the Opinion of the Release Medical Board Part-V which reads as under:-

1. Casual Relationship of the disability with service conditions or otherwise				
Disability	Attributable to Service Y/N	Aggravated by Service (Y/N)	Not connected with service (Y/N)	Reason/cause/specific condition and period in service
Maculopathy with Lenticular Opacities (Both eyes)	NO	NO	YES	Disability not connected with Military service

ANALYSIS

8. We have heard the learned counsel for the parties and have perused the record produced before us.

9. It is pertinent to refer to the Regulation 173 of the Pension Regulations for the Army, 1961 (hereinafter

referred to as 'the Regulations'), which deals with the disability pension of P.B.O.Rs, being relevant in the present case, is reproduced as follows:

"173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."

10. A perusal of the aforesaid Regulation 173, therefore, reveals that the disability pension is payable to an individual who is discharged from service on account of a disability which is attributable to or aggravated by military service and assessed at 20% or more. The question whether the disability is attributable to or aggravated by military service is to be determined under the rules contained in Appendix II. The said Appendix II contains the Entitlement Rules for Casualty Pensionary Awards, 1982 as amended from time to time. Prior thereto, there had been other Entitlement Rules for Casualty Pensionary Awards. Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982, being relevant on the point, is re-produced as follows:

"4. Invaliding from service is a necessary condition for grant of disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service. ICO/OR and equivalents in other services who are placed permanently in a medical category other than 'A' and are discharged because of alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment out are discharged before its completion of their engagement will be deemed to have been invalidated out of service."

11. It is relevant to refer to Para 24(d) of the Chapter VI of the Guide to Medical Officers, 2002 titled 'Clinical Aspects of Certain Diseases', reproduced as under:

(d) Degeneration and Dystrophy of Fundus.

(i) Central Serous Retinopathy. It is a common condition characterized by unilateral localized detachment of sensory retina at macula. If florescent angiography shows multiple leaks, the particular condition may be due to tubercular disease. Hence attributability can be conceded. About 80% of Central Serous Retinopathy undergoes spontaneous recovery and visual acuity is restored within six months.

(ii) Retinal Vascular Diseases Generally associated with Diabetes and Hypertension. Retinal artery occlusion may be due to vegetation from heart as in infective bacterial endocarditis and thrombus in myocardial infarction. Central retinal vein occlusion is associated with hypertension and hyperviscosity syndrome in leukaemia and polycythaemia vera.

(iii) Retinitis Pigmentosa. It is a generic name for a group of hereditary disorders characterized by progressive loss of photo receptor retinal pigment i.e. rods and cones. Night blindness is the main complaint with loss of acuity of vision. Disability is rejectable.

(iv) Maculopathies. These are seen in myopics and certain toxic maculopathies due to drugs (chloroquine, quinine, chlorpromazine).

12. On an analysis of the aforesaid Para of GMO, 2002, it can be taken into consideration that the issue of Maculaopathy usually arises in cases of myopia or it can occur due to use of drugs which can be directly toxic to the cells of the retina or the retinal pigment epithelium (RPE), thereby causing maculopathy, specifically toxic maculopathy.

13. As per Whitcup and Nussenblatt's Uveitis (Fifth Edition): Fundamentals and Clinical Practice, 5th Edition, 2021, 'Maculopathy' results in a macular lesion that is sight-threatening, causing a sudden, abrupt change in vision. During the initial stage the choroid may take on a ground-glass appearance and push the retina upward. It is a degenerative condition of the macula that can cause central vision loss, and may be congenital or acquired.

14. As per the Joint Report titled "The impact of myopia and high myopia" published by World Health Organization (WHO) in 2015, post Global Scientific Meeting on Myopia of World Health Organization (WHO) and Brien Holden Vision Institute, it has been specified

that the term "myopic macular degeneration" (MMD) should be used clinically and in research to categorize the blinding retinal diseases associated with high myopia. Currently, a number of terms are used, including myopic maculopathy, myopic retinopathy and myopic choroidal neovascularization. It includes signs of diffuse chorioretinal atrophy, patchy chorioretinal atrophy, lacquer cracks, choroidal neovascularization and related macular atrophy in the presence of higher myopia.

15. However, on an analysis of the summary and opinion of the Medical Specialist, we find that in absence of any myopic symptoms or any prescription of drugs such as chloroquine derivatives (chloroquine, hydroxychloroquine) and phenothiazines (thioridazine, chlorpromazine), which could have been the possible reasons behind the disability, there is nothing on record to show that the disability of the applicant was actually caused due to service related factors, and the disability of the applicant in the instant case is apparently due to age related factors, and thus, has to be considered as

being neither attributable to nor aggravated by the military service.

16. As the medical literature referred to hereinabove shows that maculopathy is a degenerative disease, it obviously could not and did not exist at the time of enrolment and there could not have been any note made of the same at the time of enrolment. In respect of such diseases occurring while in service, we may refer to Rule 14 of the Entitlement Rules for Casualty Pensionary Awards, 1982 which reads as under:

14. In respect of diseases, the following rule will be observed:-

(a) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease will fall for acceptance on the basis of aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) If the disease is accepted 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.

17. In the case of the applicant, there is nothing to show 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.

18. In view of the aforesaid analysis, we are of the view that the present OA is devoid of merit and therefore, is liable to be dismissed.

19. Hence, the OA 1052/2019 is dismissed.

Pronounced in the open Court on the 18th day of January, 2024.

[LT GEN CP MOHANTY]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/akc/