

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

OA 1433/2018  
with  
MA 1957/2018

Ex Nk Satya Narain ... Applicant  
Versus  
Union of India & Ors. ... Respondents

For Applicant : Mr. V D Sharma, Advocate  
For Respondents : Mr. Shyam Narayan, Advocate

CORAM:

HON'BLE MS. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT. GEN. C.P. MOHANTY, MEMBER (A)

ORDER

MA 1957/2018

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648), the delay in filing the OA is condoned.

2. MA stands disposed of.

OA 1433/2018

3. Invoking the jurisdiction of this Tribunal; under Section 14, of the Armed Forces Tribunal Act, 2007, the applicant has filed this application seeking grant of disability pension @ 20% rounded off to 50%.

#### Facts of the case

4. The applicant had joined the Indian Army on 11.12.1979 and was discharged from service on 15.06.1995, with almost 15 years and 06 months days of qualifying service, due to non-availability of sheltered appointment. Before his discharge, the applicant was brought before a duly constituted Release Medical Board which assessed the disabilities - (i) CEREBROVASCULAR ACCIDENT OLD @11-14% & (ii) PARTIAL SEIZURE DISORDER @ 20% for 2 years as Neither Attributable to Nor Aggravated by military service and his composite disablement was assessed @20% for life, rounded off to 20%.

#### Submissions on behalf of the Applicant

5. On behalf of the applicant, it was submitted that he was enrolled in the Indian Army in a fit medical category both physically and mentally and that there was no adverse medical opinion recorded at the time of induction into service.

6. The applicant further submits that he also underwent training before being deputed. The applicant submits that in terms of the verdict of the Hon'ble Supreme Court in

Dharamvir Singh Vs Union of India & Ors.<sup>1</sup> in, he is entitled to the benefit of grant of disability element of pension and in terms of UOI & Ors. Vs Ram Avatar<sup>2</sup>, he is entitled to the benefit of rounding off his disability element of pension from 20% to 50%.

7. The applicant submits that there is nothing on the record to show that he was suffering from the disease at a time of entry into service and that it has to be presumed that he was in sound and mental condition at the time of entry into service and deterioration in his health has to be held to be attributable to stress and strain of military service.

8. Inter alia, on behalf of the applicant, reliance was also placed on the factum that the appellant Dharamvir Singh in Civil Appeal 4949/2013 suffered from Generalised Seizures(Epilepsy), that the respondent Rajbir Singh in UOI & Ors. Vs. Rajbir Singh<sup>3</sup> in Civil Appeal No. 2904/2011, suffered from Generalised Seizures, and

- that in CA 5163/2011 in Ex Recruit Amit Kumar suffered from Manic Episode;
- that in CA 5260/2012 in Ex Sep Tarlochan Singh suffered from Epilepsy;

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<sup>1</sup> 2013 (7) SCC 316

<sup>2</sup> Supreme Court Civil Appeal no. 418/2012 [Date of Judgement: 10.12.2014]

<sup>3</sup> AIRONLINE 2015 SC 481

- in CA 10105/2011 the respondent *Harbans Singh* suffered from Epilepsy;
- in CA 1498/2011 in *Ex Sgt Suresh Kumar Sharma* suffered from Generalised Seizures;
- in CA 14478/2011 in *Ajit Singh* suffered from Idiopathic Epilepsy;
- in CA 5414/2011 in *Rakesh Kumar Singla* suffered from Bipolar Mood disorder, that all of these cases were also taken up in Civil Appeal in 2904/2011 in *Rajbir Singh* (supra), and it has been submitted on behalf of the applicant in each of the said cases, the disability element of pension was granted to the Armed Forces Personnel.

**Submissions on behalf of the Respondents**

9. The respondents through their counter affidavit submitted on their behalf submit that in the instant case, there is no documented evidence of fever, infection, trauma or any other service related stressors, leading to the onset of the disability and that the onset of the ID was in a peace station. The respondents further submit that there are no aggravating or attributable factors brought forth in the instant case, which fulfill the criteria in terms of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel,

2008. The respondents reiterated that the onset of the disease in the instant case was in a peace station.

10. The Respondents placed reliance on the verdict of the Hon'ble Supreme Court in Ex Cfn Narsingh Yadav Vs UOI & Ors.<sup>4</sup> to contend with the effect that the diseases which are undetectable by carrying out physical examination on enrolment unless adequate history is given at the time of enrolment by the member cannot be held to be attributable to the military service. Specific reliance was placed on behalf of the respondents on the observations of the Hon'ble Supreme Court in Paras- 20 and 21 thereof which read to the effect:-

*"20) In the present case, clause 14(d), as amended in the year 1996 and reproduced above, would be applicable as entitlement to disability pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the provision of grant of disability pension is a beneficial provision but, mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that Schizophrenia is presumed to be attributed to or aggravated by military service.*

*21) Though, the opinion of the Medical Board is subject to judicial review but the Courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. The invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material*

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<sup>4</sup>2019 (9) SCC 667

*on record to doubt the correctness of the Report of the invaliding Medical Board.”*

11. The respondents further submit that as per the existing policy, personnel enrolled in the Indian Army have to undergo a primary medical examination at the time of enrolment which is carried out by the Recruiting Medical Officer and respective Recruiting Centres and that internal disorders cannot be detected by the medical officer conducting recruiting medical examination at the time of enrollment in the absence of history or overt manifestation of symptoms. The respondents have thus prayed that the OA be dismissed.

#### Consideration

12. On a consideration of the submissions made on behalf of either side, we find that the disability (i) being less than 20%, does not warrant our interference. With respect to the disability (ii), it has to be observed that as laid down by the Hon'ble Supreme Court in Ex Cfn Narsingh Yadav (supra) vide observations in Para 18 thereof, each case has to be examined whether the duties assigned to the individual may have led to stress and strain leading to the disability. Hence,

13. The applicant in the case of Ex Cfn Narsingh Yadav (supra) was enrolled in the Indian Army on 02.12.2003 and

was discharged from service on 08.05.2007, when the invaliding board had found him to be suffering from Schizophrenia which disability had been assessed to be @20% for a period of 5 years and it had been observed vide Para-19 of the Hon'ble Supreme Court to the effect:

*“The appellant was a young boy of 18 years at the time of enrolment and had been boarded within 3½ years of his service. Even if he was suffering from any mental disorder prior to enrolment, the same could not be detected as there were intervals of normality. The appellant was posted in peace station as a Vehicle Mechanic. Neither the nature of job nor the place of posting was such which could have caused stress and strain leading to disability as attributed to or aggravated by military service.”*

14. The facts of the instant case however are not in *pari materia* with the facts of the case of *Ex Cfn Narsingh Yadav* (supra). This is so in as much as the applicant herewith was discharged from service in low medical Category after 15 years and 3 days of service.

15. On a consideration of the submissions made on behalf of either side, it is essential to observe the factum that as laid down by the Hon'ble Supreme Court in *Dharamvir Singh* (Supra), a personnel of the Armed forces has to be presumed to have been inducted into military service in a fit condition, if there is no note of record at the time of entrance in relation to any disability in the event of his subsequently being

discharged from service on medical grounds the disability has to be presumed to be due to service unless the contrary is established, - is no more *res integra*.

16. It is essential to observe that the facts of the instant case are *pari materia* to the facts in the case of *Ex L COM (TEL) Satish Kumar Vs UOI & Ors.*<sup>5</sup> wherein it was observed as under:

*16. Furthermore, the 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which take effect from 01.01.2008 provide vide Paras 6, 7, 10, 11 to the effect:-*

*"6. Causal connection:*

*For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.*

*7. Onus of proof.*

*Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/ invalidment/release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.*

*10. Attributability:*

*(a) Injuries:*

*In respect of accidents or injuries, the following rules shall be observed:*

*(i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).*

*(ii) In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.*

<sup>5</sup> AFT PB OA 2341/2019 [Date of Decision: 12.09.2023]

**(b) Disease:**

**(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-**

**(a) that the disease has arisen during the period of military service, and**

**(b) that the disease has been caused by the conditions of employment in military service.**

**(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contacted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course as determined by the competent medical authority.**

**(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded on the basis of the clinical picture and current scientific medical application.**

**(iv) When the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.**

**11. Aggravation:**

**A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High Altitudes etc."**

**(emphasis supplied)**

**has not been obliterated.**

**Thus, the ratio of the verdicts in Dharamvir Singh Vs. Union Of India & Ors (Civil Appeal No. 4949/2013); (2013 7 SCC 316, Sukhvinder Singh Vs. Union Of India & Ors, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, UOI & Ors. Vs. Rajbir Singh (2015) 12 SCC 264 and UOI & Ors. Vs. Manjeet Singh dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well."**

17. Furthermore, It is relevant to note that applicant's services were cut short and he was discharged from service prior to completion of terms of engagement, therefore his discharge from service should be a deemed invalidation as held in the case of Sukhwinder Singh Vs UOI<sup>6</sup> of which relevant Para 9 is reproduced as under:

*“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty percent and seems to us to be logically so. Fourthly, whenever a member of the Armed Forces is invalided out of service, it per force has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”*

18. Moreover, we find that the ‘Rule of Deemed Invalidation’ finds its affirmation under the Rule 95 of the Pension Regulations for Army, 2008 (Part-I) which clearly spells out the conditions wherein a case has to be treated as ‘Deemed Invalidation’, and the same is reproduced herein:

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<sup>6</sup> [2014 (14) SCC 364]

95. Individual who is placed in a low medical category (other than 'E') permanently and who is discharged because no alternative employment in his own trade/category suitable to his low medical category could be provided or who is unwilling to accept the alternative employment or who having been retained in alternative appointment is discharged before completion of the engagement, shall be deemed to have been invalidated out of service under the Entitlement Rules for Casualty Pensionary Awards, 1982 as laid down in APPENDIX-IV to these Regulations. This provision shall also apply to individual who is placed in a low medical category while on extended service and is discharged on that account before completion of the period of his extension.

### Conclusion

19. In view of the aforesaid analysis, we find that with nothing on the record to indicate that the applicant suffered from any disease prior to enrolment, it has to be held that the disability of the applicant i.e. "PARTIAL SEIZURE" in the instant case, was caused due to the stress and strain of military service.

20. The OA 1433/2018 is thus partially allowed. The applicant is thus held entitled to the grant of disability pension for life qua the disability of "PARTIAL SEIZURE" @20% for life which in terms of the verdict of the Hon'ble Supreme Court in UOI & Ors. Vs. Ram avtar (supra) is rounded off to 50% for life, from the date of discharge. However, the arrears shall be restricted to three years prior to the date of filing of OA (20.08.2018) keeping in view the law

laid down in the case of Union of India and others Vs. Tarsem Singh.<sup>7</sup>

21. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

22. No order as to costs.

23. Pending miscellaneous application(s), if any, stand closed.

Pronounced in the open Court on 30 day of August, 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[LT. GEN. C.P. MOHANTY]  
MEMBER (A)

Ps

<sup>7</sup> [2008 (8)SCC 649]