

**COURT No.1, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**O.A. No. 1912 of 2018**  
**with**  
**M.A. No. 2112 of 2018**

**In the matter of :**

**Ex Hav Jai Prakash**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Shri Virender Singh Kadian, Advocate**

**For Respondents : Ms. Jyotsna Kaushik, Advocate**

**CORAM :**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

**M.A. No. 2112 of 2018 :**

Vide this application, the applicant seeks condonation of 3620 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. 1912 of 2018 :**

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) Direct respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant him disability element of pension, and benefits of broad banding and/or***
- (b) Direct respondents to pay the due arrears of disability pension with interest @ 12% p.a. from the date of discharge with all the consequential benefits.***
- (c) Any other relief which the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.”***

2. The facts of the case in brief are that the applicant was enrolled in the Indian Army on 02.12.1982 and was discharged from service with effect from 31.12.2008 in low

medical category S1H1A1P3(P)E1. The Release Medical Board held in September, 2008 assessed the applicant's disability i.e. 'GENERALISED SEIZURE' @ 11-14% for life and the same was considered to be 'neither attributable to nor aggravated by military service'. The applicant's claim for disability pension was rejected by the respondents vide letter dated 29.05.2009. The applicant preferred his first appeal dated 16.07.2009 to the respondents which, according to the applicant, was not replied to. Aggrieved by this, the applicant preferred his second appeal dated 28.12.2017 which is also stated to have not been replied to till the date of filing of the OA. Hence, the present OA.

3. The learned counsel for the applicant pleaded that the applicant, at the time of joining the service, was found mentally and physically fully fit and no note was made in his medical record to the effect that he was suffering from any disease at that time and, therefore, as the disability arose during the service, the same should be held as attributable to the military service and any medical disability contracted by him during the course of his service is deemed to be attributable to/aggravated by the stresses

and strains of service. The learned counsel explained about the stressful and challenging conditions of service performed by the applicant having served in various places in different environmental and geographical conditions in his prolonged service. It is the contention of the learned counsel that the respondents failed to consider the fact that Appendix III to the Entitlement Rules, 2008 contains a list of diseases that are 'affected by stress and strain of service' and includes the hypertension, epilepsy and certain mental disorder and thus declaring the disability of the applicant mechanically as unrelated to service is unjustifiable and arbitrary.

4. The learned counsel for the applicant further submitted that the instant matter is squarely covered by the judgment of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316]** and in **Union of India & Anr. Vs. Rajbir Singh [2015 (2) SCALE 371]** 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 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 disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds being in low medical category, 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. The learned counsel also referred to Rules 5 and 14(b) of the Entitlement Rules, 1982 to submit that the deterioration of health is to be presumed to be due to service conditions; Rule 9 regarding onus of proof which lie 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. The learned counsel, therefore, prayed that the disability in question may be held as attributable to and aggravated by military service and that the disability pension may be granted to the applicant. In support of his contention, the learned counsel relied upon various orders passed by the Tribunal, wherein similar reliefs were given to the claimants.

5. *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 as "Neither Attributable to Nor Aggravated by Military Service" and assessed the same at less than 20% being not connected to the military service. The learned counsel contended that the applicant's disability does not qualify for the disability pension in view of Regulations 179 and Regulation 53(a) of the Pension Regulations for the Army, 1961 Part-I, which provides that the disability pension is granted to the individual released/retired/discharged from service when the disability should be either attributable to or aggravated by military service and minimum assessment thereof is

mandatorily required to be 20% or more and, therefore, the OA deserved to be dismissed.

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

7. At the outset, it would be pertinent to refer to Para 33 of the Guide to Medical Officers (GMO) (Military Pensions) 2002, amendment 2008 (hereinafter referred to as 'GMO (MP), 2008', which stipulates the conditions for assessing attributability of 'Epilepsy' (seizure) and is reproduced as hereunder :

**"33. Epilepsy**

*This is a disease which may develop at any age without obvious discoverable cause. The persons who develop epilepsy while serving in forces are commonly adolescents with or without ascertainable family history of disease. The onset of epilepsy does not exclude constitutional idiopathic type of epilepsy but possibility of organic lesion of the brain associated with cerebral trauma, infections (meningitis, cysticercus, encephalitis, TB) cerebral anoxia in relation to service in HAA, cerebral infraction and hemorrhage, and certain metabolic (diabetes) and demyelinating disease should be kept in mind.*

*The factors which may trigger the seizures are sleep deprivation, emotional stress, physical and mental exhaustion, infection and pyrexia and loud noise. Acceptance is on the basis of attributability if the cause is infection, service related trauma.*

*Epilepsy can develop after time lag/latent period of 7 years from the exposure to offending agent (Trauma, Infection, TB). This factor should be borne in mind before rejecting epilepsy cases.*

*Where evidence exists that a person while on active service such as participation in battles, warlike front line operation, bombing, siege, jungle war-fare training or intensive military training with troops, service in HAA, strenuous operational duties in aid of civil power, LRP on mountains, high altitude flying, prolonged afloat service and deep sea diving, service in submarine, entitlement of attributability will be*

***appropriate if the attack takes place within 6 months. Where the genetic factor is predominant and attack occurs after 6 months, possibility of aggravation may be considered."***

8. From the aforesaid, it can be made out that the disease in question may develop at any age without obvious discoverable cause and the persons who develop the disease while serving in forces are with or without ascertainable family history of disease and if the attack of disease takes place within six months of the active service such as participation in battles, warlike front line operation, intensive military training with troops, service in HAA, high altitude flying, prolonged afloat service, deep sea diving etc., attributability can be assessed. In the present case, no such service conditions are shown to have been performed by the applicant within the stipulated time of the onset of disease and there is no evidence on record to find even a remote causal link to any service related trauma which can be considered to be a contributory factor to the mental condition of the applicant. In view of the facts and circumstances above, there being no causal connection of the disability with the service, the same cannot be held either attributable to or aggravated by military service.

9. Furthermore, the law on the primacy of the opinion of a medical board has been well settled by the Hon'ble Supreme Court. While pronouncing judgment in the case of **Union of India & Another Vs. Ex Rfn Ravinder Kumar [Civil Appeal No. 1837/2009]**, the Hon'ble Apex Court vide its order dated 23.05.2012 had stated that opinion of Medical Board that ID Generalised Tonic Seizure, MA opined that ID is genetic in origin, not connected with service, should not be over-ruled judiciously unless there is a very strong medical evidence to do so. Relevant part of the above judgment reads as under :

***“Opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension brushing aside the opinion of Medical Authorities, record the specific finding to the effect that the disability was neither attributable to nor aggravated by military service, the court should not ignore a finding for the reason that Medical Board is specialized authority composed of expert medical doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability due to military service and the conditions of service resulting in disablement of the individual.”***

***5. We are of the view that the opinion of the Medical Board which is an expert body must be given due weight, value and credence. Person claiming disability pension must establish that the injury suffered by him bears a causal connection with military service.***

***6. In the instant case, the Medical Board has opined as under :***

***“ID Generalised Tonic Seizure. MA opined that ID is genetic in origin, not connected with service.***

***Thus, in view of the above, it is evident that the ailment with which respondent has been suffering from is neither aggravated nor attributable to the Army Service.”***

10. Moreover, the Hon’ble Supreme Court in the case of **Ex Cfn Narsingh Yadav Vs. Union of India & Ors. [(2019) 9 SCC 667]**, held that there can be no mechanical application of principle that any disorder not mentioned at time of enrolment is presumed to be attributed or aggravated by military service. It also held that the scope of judicial review in the opinion of a medical board is limited, as the courts do not possess expertise to dispute the report unless there is strong medical evidence warranting it. Further, the Hon’ble Supreme Court ruling amplifies that mental disorder, which cannot be medically detected during the enrolment process cannot be claimed to be attributable to rigours of service at a later stage, relevant part of the judgment reads as under :

***“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.***

***“.....Epilepsy and relapsing forms of mental disorders which have intervals of normality, unless adequate history is given at the time by the member.***

*The Entitlement Rules itself provide that certain diseases ordinarily escape detection including Epilepsy and Mental Disorder, therefore, we are unable to agree that mere fact that Schizophrenia, a mental disorder was not noticed at the time of enrolment will lead to presumption that the disease was aggravated or attributable to military service."*

11. The Hon'ble Supreme Court in the case of **Union of India Vs. Ex. Sep. R. Munusamy [2022 SCC OnLine SC 892]** held that :

*"25. ...what exactly is the reason for a disability or ailment may not be possible for anyone to establish. Many ailments may not be detectable at the time of medical check-up, particularly where symptoms occur at intervals. Reliance would necessarily have to be placed on expert medical opinion based on an in depth study of the cause and nature of an ailment/disability including the symptoms thereof, the conditions of service to which the soldier was exposed."*

12. As far as the assessment of the disability being less than 20% (11-14%), while no guidelines for assessment of the Epilepsy have been given in the GMO, 2002, however, the MoD, Office of the DGAFMS had issued certain guidelines vide letter No. 16036/DGAFMS/MA(Pen/Policy) dated 20.07.2012 for assessment of the disability percentage of Diabetes Mellitus and Epilepsy as there were no guidelines for assessment thereof were given at the time of amendment made to GMO 2002 in the year 2008. Accordingly, as per the

aforesaid policy, the guidelines for assessment of the disability percentage of Epilepsy are as under:

**“(b) Epilepsy**

**(i) Seizure free without medication for 5 yr or more :less than 20%**

**(ii) Seizure free on medication or  
Seizure free without medication for less than 5 yr : 20%**

**(iii) Breakthrough seizure while on medication deficit : > 20%**

**\* Moderate : 1-5 Convulsions/month : 30%**

**Severe : 6-10 Convulsions/month : 50%**

**Very severe : More than 10 convulsions/month : 80%”**

13. In view of the aforesaid judicial pronouncements and the parameters referred to above, we find no infirmity in the opinion of the RMB and we are of considered view that the disability of the applicant cannot be held attributable to or aggravated by service. The disability of the applicant was assessed at less than 20% by the medical board. As per the opinion of the Medical Specialist dated 21.06.2008, it is stated that the applicant was seizure-free on medication and hence as per the above mentioned policy, the applicant's disability ought to have been assessed @ 20%. However, as the applicant's disability is held neither attributable to nor aggravated by service, we hold that the applicant is not entitled to any relief asked for as it does not meet one of the twin criteria of Regulations 179 and 53(a) of the Pension Regulations for the Army, 1961 (Part-I).

14. Accordingly, the OA 1912 of 2018 stands dismissed being devoid of merits. There is no order as to costs.

Pronounced in open Court on this 5<sup>th</sup> day of August, 2024.

  
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**[JUSTICE RAJENDRA MENON]**  
**CHAIRPERSON**

  
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**[REAR ADMIRAL DHIREN VIG]**  
**MEMBER (A)**

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