

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

OA 328/2019 with MA 864/2019

Ex Sgt Kumar Gaurav

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Ved Prakash, Advocate

For Respondents : Shri Satya Ranjan Swain, Advocate

CORAM :

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

ORDER

MA 864/2019

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** (2009(1) AISLJ 371), the delay in filing the OA is condoned.

2. MA stands disposed of.

OA 328/2019

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

"(a) Quash and set aside impugned letters No. dated 05 Sep 2018 and 28 Dec 2018.

(b) Direct the respondents to grant the disability pension to the applicant rounded off the same to 50% w.e.f his date of discharge i.e. 01.01.2018.

(c) 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 along with cost of the application in favour of the applicant and against the respondents. ”

BRIEF FACTS

4. The applicant was enrolled in the Indian Air Force on 08.12.1997 and was discharged from service on 31.12.2017 under the clause on “On transfer to pension establishment otherwise than at his own request” after rendering total 20 years and 24 days of regular service. The Release Medical Board held on 01.03.2017 found the applicant fit to be released in the low medical category A₄G₄ (P) for the disabilities of (i) Seizures Disorder (Old) assessed @ 20% for life and (ii) Dyslipideamia (old) assessed @5% with composite assessment of disabilities @ 20% for life and held the same as ‘Neither Attributable to Nor Aggravated by military service’ (NANA).

5. The claim for the grant of disability element of pension of the applicant was rejected by the competent authority, AOC AFRO vide letter dated 17.07.2017 and the same

was communicated to the applicant vide letter No. Air HQ/99798/1/80355/12/17/DAV/DP/RMB dated 12.01.2018 with an advice that if he was not satisfied with the decision, he may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. The applicant submitted the first appeal dated 25.01.2018 which has not been replied to by the respondents till the time of filing of this OA. Aggrieved by this, the applicant has filed the instant OA. In the interest of justice, in terms of Section 21(2) of the AFT Act, 2007, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

6. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh v. 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 Air Force 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.

7. On behalf of the applicant, further reliance was also placed on the verdicts of the Hon'ble Supreme Court in the case of **Union of India Vs. Rajbir Singh** 2015(12) SCC 264, **UoI & Ors. Vs. Angad Singh Titaria** (AIR 2015 SC 1898) CA No. 11208, CA-5605/2010 titled **Sukhvinder Singh Vs. UoI** (2014 STPL(web) 468 SC) decided on 25.06.2014 and Civil Appeal No. 418/2012 titled **UoI & Ors. Vs. Ram Avtar**. The applicant also placed specific reliance on order of the AFT, Principal Bench, New Delhi in OA No. 600/2020 titled **Ex LEM (R) Jaideep vs. UOI & Ors.**, wherein similarly situated personnel were given relief.

8. *Per contra*, the learned counsel for the respondents submits that as per Rule 153 of the Pension Regulations for the Air Force, 1961 (Part-1), the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Air Force service and is assessed 20% or more. The learned counsel further submits that since the applicant's disability was NANA as declared by the RMB, his claim for the grant of the disability was rejected by the competent authority and thus the applicant is not entitled to the grant of the disability pension.

ANALYSIS

9. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that the applicant has suffered from two disabilities viz. '(i) Seizure Disorder (Old) @ 20% (ii) Dyslipidemia (Old) @5% with composite assessment of disabilities @20% for life. In so far as, the disability of 'Dyslipidemia' is concerned, the same is assessed below 20% and does not fulfil the mandatory condition as per Rule 153 Pension Regulations for Air Force, 1961 (Part-I) and hence is not admissible.

10. After perusal of the records of OA 328/2019, we are of the view that it is not in dispute that the extent of the said disability was assessed to be @20% which is the bare minimum for grant of disability pension in terms of Rule 153 of the Pension Regulations for the Air Force, 1961 (Part-1). The only question that arises for consideration is whether disability suffered by the applicant was attributable to or aggravated by military service.

11. Para 33 of Chapter VI of the Guide to Medical Officers (Military Pensions) 2002, amendment 2008, (GMO(MP)

2008), stipulates the conditions for assessing attributability of 'Epilepsy' 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 infarction 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 sub-marine, entitlement of aggravation will be appropriate if the attack takes place while serving in those areas."

12. In the instant case, the applicant was enrolled in the Indian Air Force on 08.12.1997 and contracted the disability of Seizure on 02.10.2003 i.e. after 6 years of military service. There is nothing on record to show that the applicant had suffered with any excessive stress and strain, which caused him the said disability in such a short span of military service which were all in peace stations. In view of this, it is apparent that the disability of the applicant's disability has no nexus with service and has no causal connection with the military service. The RMB has, therefore, rightly assessed the disability of the applicant i.e. 'Seizure' as neither attributable to nor aggravated by service. The applicant after contracting the disability continued to serve in peace area and there is nothing on record to show that he was under stress and strain, hence the disability cannot be held aggravated by military service.

14. In view of our analysis, for coming to the conclusion we rely upon the decision of the Hon'ble Supreme Court in the case of **Ex Cfn Narsingh Yadav Vs. Union of India & Ors. [(2019) 9 SCC 667]**, as the present OA is squarely covered by the abovementioned case wherein the applicant

was also posted to peace stations only throughout his military service and was diagnosed with the disability of 'Schizophrenia' within 3½ years of his service. Furthermore, there was no strong medical evidence on record to show that the cause of the said disease had any causal connection with military service or was adversely affected due to factors related to conditions of military service likewise the applicant in the instant case. It was further held by the Hon'ble Supreme Court 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.”

15. 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.”

15. In view of the aforesaid judicial pronouncements and the parameters referred to above, we find no infirmity in the opinion of the medical board and we are of the considered view that the disability of the applicant cannot

be held to be attributable to or aggravated by military service and hence, the relief asked for is not sustainable.

CONCLUSION

16. In view of the aforesaid analysis and the parameters referred to above, there being no infirmity in the opinion of the RMB, the OA 328/2019 stands dismissed being devoid of merits.

17. There is no order as to costs.

Pronounced in the open Court on this day ^{HM}6 of December, 2024.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/nmk/