

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

O.A. No. 408 of 2019

with

M.A. No. 957 of 2019

In the matter of :

Col P. Balakrishnan (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri I.S. Yadav, Advocate

For Respondents : Shri D.K. Sabat, 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. 957 of 2019 :

Vide this application, the applicant seeks condonation of 8265 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. 408 of 2019 :

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) To declare the action of the respondents as unjust, arbitrary and illegal; and***
- (b) To quash the respondents letter No52334/GREN/IC- 27806K/MP-6(D)/315/07/PS-4 (Imp-II) dated 30 Jan 2008, dated 25 Aug 2017 and dated 06 Dec 2018 (Annexure A-1, Coolly), and***
- (c) To direct the respondents to grant the disability pension 70% and further rounding off the disability pension to 75% in terms of letter dated 31 Jan 2001; and***
- (d) To grant an interest of 18% on the delayed payment of service element of the disability pension and revision; and***
- (e) To award exemplary costs upon the Respondents in the facts and circumstances of the record; and***

(f) Such further order or orders, direction / directions be passed so as to this Learned Tribunal may deem fit and proper in accordance with law.

2. The facts of the case, in brief, are that the applicant was commissioned as 2/Lt in the Army on 17.06.1973 and superannuated w.e.f. 31.12.2007 in low medical category S1H1A1P2E1(P). The Release Medical Board (RMB) held on 12.06.2007 assessed the disabilities of the applicant, i.e., (a) CAD IWMI-SVD, LCX POST PCI (OLD) @ 50%; (b) HYPERLIPIDEMIA @ 1 to 5%; (c) HYPER URICAEMIA @ 1 to 5%; (d) IGT @ 1 to 5%; and (e) PIVD L₃-L₄ @ 20%; with composite disablement @ 70% for life and all the disabilities were held as 'neither attributable to nor aggravated by military service (NANA)'.

3. The applicant was granted service pension. The initial claim of the applicant for grant of the disability element of pension was rejected by the respondents vide letter dated 30.06.2008 for the reason that the disabilities of the applicant were considered as neither attributable to nor aggravated by

military service. The first appeal dated 15.06.2017 preferred by the applicant against the denial of disability pension was rejected by the respondents vide letter dated 25.08.2017 on the ground that the appeal was time-barred. Thereafter, the applicant filed O.A. No. 441/2018, which was disposed of by the Tribunal vide order dated 23.02.2018 directing the respondents to treat the OA as the second appeal of the applicant and decide the same in accordance with law. The second appeal was also rejected by the respondents vide order/letter dated 06.12.2018. Hence, this OA.

4. Learned counsel for the applicant submitted that the applicant, at the time of enrolment, was declared medically and physically fully fit, and no note was made in his medical documents that he was suffering from any disease at that time. Learned counsel further submitted that while denying the disability pension, the respondents failed to appreciate that as per relevant rules, in case of discharge of the applicant from service in low medical category, if no note is on record at the time of joining of service, the deterioration in health and any disease contracted during service is to be presumed due to

service conditions and onus to prove otherwise lies with the respondents only. The learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]**, which has been considered and taken note of by the Hon'ble Apex Court in many judgments including **Union of India and Ors. Vs. Rajbir Singh (2015) 12 SCC 264** and various orders of the Tribunal, wherein 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 disabilities 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.

5. 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. Learned counsel further contended that the Tribunal has already granted disability pension to similarly situated persons and thus this OA may be allowed.

6. *Per contra*, learned counsel for the respondents, in the counter affidavit, submitted that the disabilities of the applicant have been considered as neither attributable to nor aggravated by military service being constitutional disorder, by the RMB, which is an expert body, and thus the applicant is not entitled for grant of disability element of the disability pension in terms of Regulation 53 of the Pension Regulations for the Army, 1961 (Part-1). Learned counsel further added that while disposing of the second appeal of the applicant, detailed justifications were given with regard to the conceding the disabilities as neither attributable to nor aggravated by military service. Thus, learned counsel prayed that the OA may be dismissed.

7. We have heard the learned counsel for the parties and have perused the record.

8. The disabilities of the applicant have been assessed by the RMB as under :

- | | | |
|-------|-------------------------------------|-----------|
| (i) | CAD IWMI SVD CLX Post PCI | - 50% |
| (ii) | Hyperlipidemia (old) | - 1 to 5% |
| (iii) | Hyperuricaemia (old) | - 1 to 5% |
| (iv) | IGT (old) | - 1 to 5% |
| (v) | PIVD L ₃ -L ₄ | - 20% |

Composite assessment for all the disabilities was made as 70% for life.

As the disabilities hyperlipidemia, hyperuricaemia and IGT have been assessed at less than 20% i.e. 1 to 5% each, these three disabilities do not qualify for the purpose of grant of disability pension in view of Para 53 of the Pension Regulations for the Army, 1961. Accordingly, we are considering the disabilities CAD and PIVD, which are assessed @ 50% and 20% respectively, only for determining the attributability and/or aggravation of the same due to military service.

9. It is not in dispute that at the time of joining the Indian Army in June, 1973, the applicant was found medically and physically fully fit, and that the disabilities under consideration

were detected during service. It is also not controverted that at the time of discharge from service on 31.12.2007, the applicant was placed in low medical category P2(P).

10. The law on the issue of attributability/aggravation of a disability is already settled by the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India [(2013) 7 SCC 316]**, which has been followed in subsequent decisions of the Hon'ble Supreme Court and in a catena of orders of this Tribunal, wherein the Hon'ble 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, 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. The guidelines laid down vide the verdict in *Dharamavir Singh (supra)* are as under:-

“28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under “Entitlement Rules for Casualty Pensionary Awards, 1982” of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been 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. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 - "Entitlement : General Principles", including paragraph 7, 8 and 9 as referred to above."

11. 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 and 11 thereof as under:

"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.

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.*

(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 contracted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical courses 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....."

12. The Hon'ble Supreme Court in the case of **Union of India and Ors. Vs. Rajbir Singh (2015) 12 SCC 264** decided on 13.02.2015, after considering the case in *Dharamvir Singh (supra)* upheld the decision of this Tribunal granting disability pension and observed as under :

“15. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service.....”

13. Further, in Para 47 of Chapter VI of the Guide to Medical Officers (Military Pensions) 2002, amended 2008 (hereinafter referred to as 'GMO (MP) 2008', various factors including prolonged stress and strain and physical hardship caused by serving in field and high altitude areas have been provided which cause the heart diseases to the army personnel. It would be relevant to reproduce Para 47 of the GMO, which is as under:-

“47. Ischaemic Heart Disease (IHD). IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden

cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the atheromatous plaque and a variable degree of occlusion of the coronary artery. A total occlusion results in myocardial infarction in the territory of the artery occluded. Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias. The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service.....”

[Emphasis supplied]

14. As regards the disability PIVD which cause low backache, we may refer to

“51. Low backache.

Low backache is a clinical entity which is characterised by pain in the lower back which may be associated with sciatica and neurological deficit. The causes of low backache are:

- (a) Musculofascial strain*
- (b) Lumbar spondylosis*
- (c) Facet joint arthropathy*
- (d) Prolapsed inter vertebral disc*
- (e) Sacroilitis*
- (f) Ankylosing Spondylitis*
- (g) Spondylolisthesis*

(h) Trauma

Post traumatic low backache will be considered attributable. Aggravation due to stress & strain of service should be conceded in other cases."

15. From the above, it is clear that the low backache caused by PIVD is to be conceded aggravated due to stress and strain of service. The applicant was detected with the disability PIVD L₃-L₄ in March, 2004, and even after having diagnosed with the said disability and the other disability i.e. CAD in December, 2005, the applicant continued to perform military duties till the date of his retirement in December, 2007 and thus the disability of the applicant can be said to have aggravated by the military service. In the present case, although the disabilities were noted when the applicant was posted in peace area, the probability of earlier military service for a long period in different parts of the country having different and difficult geographical and environmental conditions having contributed to mental as well as physical stress and strain resulting in CAD or even PIVD cannot be overlooked.

16. Moreover, it has already been observed by the Tribunal in large number of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service. It may also be taken into consideration that the most of the personnel of the armed forces live without their family, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. Admittedly, the applicant was enrolled in June, 1973 and the disabilities have occurred in March, 2004 (PIVD) and December, 2005 (CAD) i.e. after more than 30 years of service and the applicant was discharged from service on 31.12.2007 in low medical category S1H1A1P2(P)E1. Therefore, we are of the considered view that the benefit of doubt in these circumstances should be given to the applicant and thus in view of the settled law on the point of attributability and/or aggravation, we hold that the disabilities suffered by the applicant i.e. CAD and PIVD' as attributable to and aggravated by the military service. Hence, the applicant is entitled to disability element of pension in respect of these two disabilities along with benefit of rounding off.

17. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled for the disability element of pension in respect of the two disabilities i.e. CAD @ 50% and PIVD @ 20% for life, the composite assessment of which is being calculated as per MoD letter No. 16036/RMB/IMB/DGAFMS/MA (pens) dated 14.12.2009 as under :

Disability-CAD = 50% (disability with maximum percentage)

Disability-PIVD (100-50) = $50 \times 20/100 = 10\%$

Composite Assessment = $50 + 10 = 60\%$

18. In view of the above, OA 408 of 2019 is allowed. The respondents are directed to grant the disability element of pension to the applicant @ 60% for life which is directed to be rounded off to 75% for life, with effect from the date of retirement in terms of the judicial pronouncement 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. However, as the applicant approached the Tribunal after a considerable delay, in view of the law laid down by the Hon'ble Apex Court in *Tarsem Singh's case (supra)*, arrears will be

restricted to three years prior to the date of filing of this OA i.e. 07.03.2019.

19. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within three months from the date of receipt of copy of this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

20. There is no order as to costs.

Pronounced in open Court on this 27th day of September, 2024.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

/ng/

IN THE ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 408 /2019

A

IN THE MATTER OF:

Col P Balakrishnan (Retd) (IC-27806K) ...Applicant

Vs.

Union of India & Ors.Respondents

MEMO OF PARTIES

IN THE MATTER OF:


Col P Balakrishnan (Retd) (IC-27806K)
House No 200, Swarn Jayanthi Rail Nagar,
Sector -50, NOIDA-201303 ...:Applicant

Versus

- Union of India through
1. The Secretary
Ministry of Defence
South Block,
New Delhi – 110011
 2. Chief of the Army Staff,
Integrated HQ of MoD (Army)
DHQ PO, New Delhi – 110011
 3. The PCDA (Pension)
Dhraupati Ghat
Allahabad (UP)
- ..Respondents

Through :

Date : 31 Jan 2019
Place : New Delhi.


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