

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

O.A. No. 620 of 2019
with
M.A. No. 1196 of 2019

In the matter of :

Ex Nk Kishan Lal Regar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Shakti Chand Jaidwal, Advocate

For Respondents : Shri Avdhesh Kumar Singh, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

M.A. No. 1196 of 2019 :

Vide this application, the applicant seeks condonation of 8235 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. 620 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) Call for relevant records of the Applicant and after perusal thereof, set aside the Impugned Order dated 11.03.1996 passed by the Respondents, whereby, the Applicant has been denied disability element of pension by the Respondents;

(b) Direct the Respondents to treat the disability of the Applicant namely, "HYPOTHYROIDISM-244" as attributable to/ aggravated by military service as the same has originated due to service related causes while the Applicant was posted to field area at High Altitude;

(c) Direct the Respondents to treat the disability of the Applicant for life in terms of Govt. Notification dated 07.02.2001 instead of three years, since the disability of permanent nature

requiring lifelong treatment as mentioned in RMB proceedings;

(d) Direct the Respondents to grant disability pension to the Applicant @ 20% for life w.e.f. 01.02.1995, as degree of his disablement has been assessed @ 20% by the RMB;

(e) Direct the Respondents to pay disability pension to the Applicant at enhanced rate @ 50% for life w.e.f. 01.01.1996 by broad-banding Applicant's disability from 20% to 50%.

(f) Direct the Respondents to pay to the Applicant an interest @ 10% per annum on arrears of the disability pension and/or;

(g) Issue such other order(s)/direction(s) as may be deemed appropriate in the facts and circumstances of the case.

2. Briefly, the facts of the case are that the applicant was enrolled in the Indian Army on 16.12.1978 and was discharged from service on 31.01.1995 in low medical category. The Release Medical Board (RMB) held on

11.11.1994 assessed his disability 'HYPOTHYROIDISM-244' @ 20% for three years and the same was considered as neither attributable to nor aggravated by military service (NANA). The net assessment qualifying for disability pension was 'Nil'.

3. The initial claim for disability pension was forwarded to PCDA (P) Allahabad and was rejected by them vide letter dated 09.02.1996 stating that the disability of the applicant is not connected to military service being constitutional in nature. However, the applicant was granted service pension with effect from 01.02.1995 vide PPO No. S/040538/94 (Army) dated 06.01.1995. These facts were communicated to the applicant vide letter dated 11.03.1996 with an advice to prefer an appeal within six months from the date of issue of the letter.

4. The applicant filed a petition dated 09.08.2018 seeking disability element of disability pension which was replied to by the respondents vide letter dated 25.08.2018. Aggrieved by the same, the applicant has filed the present OA for the said relief.

5. Learned counsel for the applicant submitted that at the time of joining the Army, the applicant was declared fully fit

medically and physically and no note was made in his medical record to the effect that the applicant was suffering from any disease at that time and, therefore, any medical disability contracted by him during the course of his service should be treated as attributable to and aggravated by the stress and strains of service. Learned counsel narrated the facts that during the postings to various places of uncongenial environments, the applicant suffered from medical problems, such as Malaria in 1984 followed by other associated ailments and due to this, he was given regular drug therapy; and due to the prolonged period of being under drug therapy and being posted to a high altitude area (HAA) in J&K in the year 1991, the applicant was detected to be suffering from 'Hypothyroidism' and he further submitted that the respondents erred in considering the disability of the applicant as neither attributable to nor aggravated by service and failed to consider the fact that he had performed duties in the stressful and difficult conditions of service with dietary compulsions during his service tenure which put tremendous mental and physical pressure on the applicant and had

impacted adversely on the health of the applicant and thus in May, 1991, while the applicant was posted in HAA of J&K where he was subjected to sub optimal dietary iodine intake associated with dietary compulsions in that area and thus the applicant suffered from Hypothyroidism.

6. Learned counsel for the applicant further submitted that the instant matter is squarely covered by the judgment of the Hon'ble Supreme Court **Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316]**, which was followed in subsequent judgments of the Apex Court in **Union of India & Anr. Vs. Rajbir Singh [2015 (2) SCALE 371]** and submitted that the respondents' action in denying the disability pension is unjustified and unlawful, when the disabilities recorded by the RMB occurred during the military service and was caused due to stress and strain of service, particularly two of the disabilities were held as aggravated by service. He drew our attention to various rules and regulations which provides that the cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during the service and the conditions

and circumstances of duty in Armed Forces determined and contributed to the onset of the disease. Learned counsel further added that the applicant's disability was assessed only for three years whereas the as per opinion of the RMB and the specialist, the applicant requires lifelong treatment and hence the disability of the applicant should have been assessed for lifetime instead of three years. In this regard, learned counsel referred to the GoI, MoD policy letter dated 07.02.2001 vide which it was provided that no periodical reviews by the review medical board to be held in permanent nature of disability, unless the individual himself requests for the same, and decision once taken by the medical board will be final and for life. Therefore, the respondents committed grave error in assessing the duration of disablement for three years only.

7. In this regard, learned counsel referred to Rules 5 and 14(b) of the Entitlement Rules, 1982 to submit that when no note was made about the disease at the time of joining the service, the deterioration of health in the course of service is to be presumed to be due to service conditions; Rule 9 to submit

that the onus of proof of condition of non-entitlement is not on the claimant but 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. Learned counsel submits that the first and second Appeal Medical Boards have wrongly considered the disabilities as NANA and he, therefore, prayed that the disabilities in question may be held as attributable to and aggravated by military service and that the disability pension may be granted to the applicant.

8. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the medical boards, being expert body, after thorough examination of the applicant found the disability as "Neither Attributable to Nor Aggravated by Military Service" on the ground that the same are constitutional in nature and not connected with service and that the applicant was managed without any delay. Learned counsel also pleads that the matter suffers from delay and laches. It is further submitted

that the applicant's disability does not fulfill the necessary conditions for being eligible to get disability pension in terms of Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I), thus the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed.

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

10. In the present case, the applicant was diagnosed with the disability 'Hypothyroidism' which had occurred in May, 1991. Since Hypothyroidism relates to an underactive thyroid, a condition in which the thyroid gland does not produce enough of certain crucial hormones, therefore, the disease can happen at any stage of life and normally tends to happen more towards middle age. The disease is very common and normally relates to lifestyle and congenital unless any specific grounds are given. For determining the attributability, it would be helpful to refer to the medical review/article available in the open domain in respect of various factors which can cause Hypothyroidism. In support

of this, the medical review (page ref. **healthline**) in relation to the primary hypothyroidism is referred to as under :

“What causes primary hypothyroidism ?

The most common cause of primary hypothyroidism is Hashimoto’s thyroiditis. This is an autoimmune disease that causes your immune system to mistakenly attack your thyroid.

You might also develop primary hypothyroidism for a number of other reasons.

If you had hyperthyroidism (or overactive thyroid), your treatment may have left you with hypothyroidism. A common treatment for hyperthyroidism is radioactive iodine. This treatment destroys the thyroid. A less common treatment for hyperthyroidism involves the surgical removal of part or all of the thyroid. Both can result in hypothyroidism.

If you had thyroid cancer, your doctor would have surgically removed your thyroid, or part of it, to treat the cancer.

Other possible causes of hypothyroidism include:

- *insufficient dietary iodine*
- *a congenital disease*
- *certain drugs*
- *viral thyroiditis*

In some cases, a woman might develop hypothyroidism after giving birth. According to the National Institutes of Health, the disease is most common in women and people over 60 years old.”

11. The applicant was examined by the Medical Board which held the disability as neither attributable to nor aggravated by military service. There is no evidence available on record of the case to suggest that the disease was caused due to stress and strain or any circumstances or reasons related to the military service. The armed forces personnel are posted in difficult

areas, field and HAA during their service and for that they are given required professional training to combat the vagaries of weather and thus mere postings in these types of areas cannot be considered with regard to the disability as being attributable to service. The contention of the applicant that he was on drug therapy for prolonged period is not convincing as there is nothing mentioned about the kind of drugs he was taking and till what period. Thus, there being no causal connection between the disability and the military service, we find no reason to interfere with the opinion of the RMB.

12. Regarding the issue of primacy of the opinion of the medical board, the Hon'ble Supreme Court in its judgment in the case of **Union of India Vs. Ravinder Kumar [Civil Appeal No.1837 of 2009]** decided on 23.05.2012, has explicitly viewed that :

"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.”

13. The Hon'ble Supreme Court in the case of **Union of India Vs. Ex. Sep. R. Munusamy [2022 SCC OnLine SC 892]** held that many diseases escaped detection at the time of medical check-up, relevant portion of the judgment reads as under :

“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.”

14. From the above, it is clear that the disability of the applicant does not fall within the scope of attributability to military service as the opinion of the medical board shows that the disease was being constitutional in nature and considered

the disability as neither attributable to nor aggravated by service and not connected with service. We, therefore, find the opinion given by the medical board is justified and thus do not find any infirmity in its proceedings.

15. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is not entitled for grant of disability element of pension. The OA stands dismissed being devoid of merits.

16. There is no order as to costs.

Pronounced in open Court on this 4th day of
September, 2024.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

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