

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

**O.A. No. 708 of 2019**  
**with**  
**M.A. No. 1310 of 2019**

**In the matter of :**

**Ex Hav Prakasan Mavila**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Shri U.S. Maurya, Advocate**

**For Respondents : Shri Arvind Patel, Advocate**

**CORAM :**

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

**ORDER**

**M.A. No. 1310 of 2019 :**

Vide this application, the applicant seeks condonation of 2102 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.

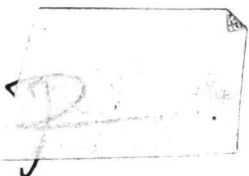
MA stands disposed of accordingly.

**O.A. No. 708 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) Impugned orders dated 26.09.2009; 26.05.2010; 09.06.2011; 26.06.2011; 28.12.2012 and 14.01.2013 be set aside passed by the respondents to the extent this order deny the grant of Disability Pension to the applicant as disability was neither attributable to nor aggravated by military service.***

***(b) Direct Respondents to grant Disability Element wef 01.07.2008 (date of discharge) @ 50% (after rounding off from 20% to 50%) as applicant's case is squarely covered on the matter of disease neither attributable to nor aggravated by military service by the Hon'ble Supreme Court in the case of Dharamvir Singh Vs. Union of India & Ors (Civil Appeal No. 4949 of 2013 judgment dated 02.07.2013), Union of India Vs. Rajbir Singh (Civil***



*Appeal No. 2904 of 2011 judgment on 13.02.2015 along with the 26 connected appeals), Union of India & Ors. Vs. Angad Singh Titaria (Civil Appeal No. 11208 of 2011 judgment on 24.02.2015) and latest judgment Ex. Gnr. Laxmanram Poonia (Dead) Through Lrs. Vs. Union of India and Ors. (Civil Appeal No. 2633 of 2017 judgment dated 22.02.2017) and on the matter of rounding of disability pension, PCDA (P) Allahabad Circular No. 301 dated 27.05.2002 and Hon'ble Supreme Court order dated 10.12.2014 in Civil Appeal No. 418/2012 titled Union of India and Ors Vs. Ram Avtar.*

*(c) Direct Respondents to grant arrears of Disability Element wef 01.07.2008 (date of discharge) with 9% interest as applicant case squarely covered with this Hon'ble Tribunal in OA No. 1439/2016 title Ex Sgt. Girish Kumar Vs. UOI & Ors. order dated 01.12.2017 and Hon'ble Supreme Court in Civil Appeal No. 9946 of 2016 order dated*

**20.09.2016 titled Davinder Singh Vs. Union of India and Ors.**

**(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.**

2. Briefly, the facts of the case are that the applicant was enrolled in the Indian Army on 15.12.1990 and was discharged from service on 30.06.2008 in low medical category S1H3A1P1E1. The Release Medical Board (RMB) held on 28.05.2008 assessed his disability 'OTOSCLEROSIS (BIL) RT OPTD' @ 20% for life, and the same was considered as neither attributable to nor aggravated by military service (NANA). The net assessment qualifying for disability pension with duration is 'Nil'.

3. The initial claim for disability pension was rejected and he was informed the non-grant of disability pension vide AEC Records letter dated 26.09.2009 with an advice to prefer first appeal to Appellate Committee for First Appeal (ACFA) within six months, if not satisfied. The applicant preferred first appeal dated 27.07.2010 and the same was forwarded to IHQ



of MoD (Army), ADGPS (PS-4) which was then rejected vide letter dated 09.06.2011 with instructions to prefer second appeal to Second Appellate Committee on Pension (SACP) within six months, if not satisfied. Thereafter, the applicant preferred the second appeal dated 30.09.2011 and the same was rejected by the SACP and the decision of the SACP was intimated to the applicant by the AEC Records vide letter dated 14.06.2013. Aggrieved by the same, the applicant has filed the present OA.

4. Learned counsel for the applicant submitted that at the time of joining the Army, the applicant was declared medically and physically fully fit 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 submitted that the applicant was posted in CI Ops area/field area Kathua (J&K) in extreme cold and hard station since February, 1992 and participated in many operations during his service; that in

May, 1996, he was diagnosed with the disability and was operated upon at MH, Roorkee and was placed in low medical category H3 (Permanent); that the applicant continued to perform strenuous services due to which the disability got aggravated; that the applicant was discharged from service before completion of term of engagement due to the disability in question, hence the applicant is to be treated as invalidated out of military service and thus is entitled to grant of disability element of pension.

5. 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 disability as NANA and he, 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.

6. Learned counsel placed reliance on the judgments of the Hon'ble Supreme Court including **Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]**, **Union of India & Anr. Vs. Rajbir Singh [2015 (2) SCALE 371]**, **UoI & Ors. Vs Angad Singh Titaria [AIR 2015 SC 1898]**, **Ex Gnr Laxmanram Poonia (Dead) Through LRs Vs. Union of India & Ors. [Civil Appeal No. 2633/2017 decided on 22.02.2017] etc.** wherein based on the ruling in *Dharamvir Singh (supra)*, disability pension was allowed to the claimants, and the orders passed by the Tribunal. It has been submitted on behalf of the applicant that that the respondents' action in denying the disability pension is unjustified and unlawful, when the disability recorded by the RMB occurred during the military service and got worsened while performing military duties and 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 disability 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. Hence in view of the law laid down by the Hon'ble Apex Court, the opinion of the RMB, the decision of the respondents may be set aside and the applicant may be granted disability element of pension.

7. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, 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 is a hereditary progressive disorder and not connected with service and that the applicant was provided treatment without any delay. Learned counsel further submitted that the SACP, after thorough examination of the service/medical documents of the applicant and in light of the relevant rules and regulations, rejected the second

appeal of the applicant citing reasons to hold the disability as NANA. It is further submitted on behalf of the respondents that the applicant's disability does not fulfil 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.

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

9. In the present case, the applicant was diagnosed with the disability 'Otosclerosis (Bil) Optd' which had occurred in May, 1996. Since the disease in question relates to a condition that causes abnormal bone growth in the middle ear which can cause hearing loss. In this connection, we may refer to Para 58 of the Guide to Medical Officers (Military Pensions) 2002 amendment 2008, which reads as under :

***"58. Otosclerosis. Otosclerosis is hereditary progressive form of conductive or middle ear deafness but it may be associated with an added perceptive or nerve deafness due to involvement of the nervous elements of the cochlea, particularly in the later stages of the disease. It is now widely held that,***

*although other aural conditions may co-exist with otosclerosis, the only conditions which have an adverse effect on the disease itself are prolonged serious or debilitating conditions, serious injury involving fractures of major bones, or pregnancy, when deterioration occurs in close time relationship to such events.*

*From the entitlement point of view, it is important to establish a firm diagnosis, i.e. that the condition present is otosclerosis, and not another form of conductive deafness e.g. otitis media; and that any disablement present is due entirely to otosclerosis, and not partly to an additional aural condition which may or may not be related to service."*

10. Further, it would be helpful to refer to the medical review/article available in the open domain in large number for determining the attributability in respect of various factors which can cause Otosclerosis. In support of this, the medical review (ref. WebMD) in relation to Otosclerosis giving risk factors for the disease is referred to as under :

**“Age:** *It usually starts when you're young. You can develop otosclerosis between the ages of 10 and 45, but you're most likely to get it during your 20s. Symptoms usually are at their worst in your 30s.*

**Genetics:** *It often runs in families. About half of all people with otosclerosis have a gene that's*

*linked to the condition. But even if you have the gene, you won't necessarily get it.*

*Gender: Both men and women get otosclerosis. Women, though, have a higher risk. Experts aren't sure why, but if you're a woman and develop otosclerosis during pregnancy, you're likely to lose your hearing faster than if you were a man or you weren't pregnant.*

*Race and Ethnicity: Caucasians are most likely to get it. About 10% develop otosclerosis. It's less common in other groups and rare for African Americans.*

*Medical History: Certain medical problems can raise your chances of otosclerosis. For example, if you had measles at any time, your risk may go up. Stress fractures to the bony tissue around your inner ear also might make it more likely to happen. And immune disorders, in which your immune system mistakenly attacks parts of your body, also can be linked to the condition."*

From the above, it is clear that for determining the attributability or aggravation, various factors are to be taken into consideration which may have led to the disease in question and, therefore, the disability of the applicant, without any specific evidence, cannot be held attributable to or aggravated by the service conditions.

11. Moreover, while rejecting the second appeal of the applicant, the SACP had given the grounds for considering the disability of the applicant as NANA, as is evident from the letter dated 28.12.2012 sent to the applicant by IHQ, MoD (Army) ADGPS, AG Branch, which reads as under :

*“Your second appeal dated 30 Sep 2011 for grant of disability pension submitted to the Second Appellate Committee on Pension (SACP) has been examined by the Committee based on your service/medical documents in the light of the relevant rules/instructions on the subject and it has been decided by the committee that your disability ‘OTOSCLEROSIS (BIL) RT OPTD FOR RMB Z-09.0’ is a hereditary disease characterized by formation of new bone in the labyrinth which causes progressive hearing loss. The disease is hereditary in nature hence not attributable to service. It is a progressive disorder not related to service conditions, in this case no other factors like exposure to ototoxic drugs/loud noise/trauma are evident which may have aggravated the disease. You received adequate treatment in service hospital, hence considered not to be aggravated by service. It is therefore, regretted that you are not eligible for disability pension and your appeal has been rejected.”*

12. In this case, 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. As per SACP, there was no other factors found like exposure to ototoxic drugs/loud noise/trauma which may have aggravated the disease and that the applicant received adequate treatment in service hospital. 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.

13. 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.***

14. 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."***

15. From the above, it is clear that the disability of the applicant does not fall within the scope of attributability or aggravation with regard to military service as the opinion of the medical board shows that the disease was being hereditary progressive disorder 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 RMB is justified and thus do not find any infirmity in its proceedings.

16. 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.

17. There is no order as to costs.

Pronounced in open Court on this 27<sup>th</sup> day of September, 2024.

**[JUSTICE RAJENDRA MENON]  
CHAIRPERSON**

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

/ng/