

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

OA 101/2019

Ex Sgt Dilip Kumar Mishra

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Bharat Singh, Advocate

For Respondents : Shri Neeraj, Sr. CGSC

CORAM :

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

ORDER

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) To direct the respondents to grant the applicant with the 50% disability from the date of discharge i.e. 01.08.2017.

(b) To direct the respondents to pay arrears from the date of discharge i.e. 01.08.2017 along with interest @12% per annum till its payment to the applicant.

(c) Pass any other or such further order or orders as deemed fit to this Hon'ble Tribunal in order to secure the

ends of justice in favour of the applicant."

BRIEF FACTS

2. The applicant was enrolled in the Indian Air Force on 15.07.1997 and discharged from service on 31.07.2017 under the clause "On fulfilling the conditions of enrolment" after rendering total 20 years of regular service. The Release Medical Board held on 25.08.2016 found the applicant fit to be released in the low medical A₄G₄ (P) for the disability of Focal Seizure Secondary Generalization (old) assessed @20% for life while the net qualifying element for disability was recorded as NIL for life on account of the disability being treated as neither attributable to nor aggravated by military service.

3. The claim for the grant of disability element of pension of the applicant was adjudicated and rejected by competent authority and the same was communicated to the applicant vide letter dated 26.04.2017 with an advice that if he was not satisfied with the decision of the competent authority, he may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. The applicant preferred both first appeal and second

appeal dated 25.06.2018 and 26.12.2018 respectively but his both appeals have not been responded to till the date of filing of this OA. Aggrieved by this, the applicant had filed this OA. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

4. 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.

5. The applicant placed reliance on the verdicts of the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India & Ors, (2013) 7 SCC 316***, wherein similarly situated personnel were given relief.

6. *Per contra*, the learned counsel for the respondents submitted that under the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), 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. In other words, disability pension is granted to those who fulfill the following two criteria simultaneously:-

(i) Disability must be either attributable to or aggravated by service.

(ii) Degree of disablement should be assessed at 20% or more.

7. The learned counsel further submitted that the RMB has assessed the applicant's disability as neither attributable to nor aggravated by service that does not fulfill the criteria (i) as above and hence the applicant is not entitled for grant of disability pension in accordance with prevailing rules and policies.

ANALYSIS

8. On the careful perusal of the materials available on record and also the submissions made on behalf of the

parties, we are of the view that it is not in dispute that the extent of 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 Indian Air Force, 1961 (Part-I). The only question that arises is whether disability suffered by the applicant was attributable to or aggravated by military service.

9. Para 33 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 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."

10. In the instant case, the applicant was enrolled in the Indian Air Force on 15.07.1997 and only after 6 years of regular service in the year 2008 when he was posted to 2305 Flt Amritsar, he was diagnosed with the disability of 'Focal Seizure with Secondary Generalization (old)'.

11. A perusal of the posting profile of the applicant reveals that throughout his service in Indian Air Force, the applicant was posted to peace stations only. There is also nothing in the medical documents or any other document produced before us that the applicant had any service

related trauma or was exposed to any offending agents or was on active service as brought out in Para 33 of the GMO (MP) 2008. Moreover, the service conditions whilst the applicant was posted in 2305 FLT Amritsar does not constitute active service such as participation in battles, war-like frontline operation, bombing, siege, jungle warfare training etc. ,

12. 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 evident 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."

13. The Hon'ble Supreme Court in the case of *Ex Cfn Narsingh Yadav Vs. Union of India & Ors. [(2019) 9 SCC 667]*, held 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.

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 rigors of service at a later stage, relevant part of the judgment reads as under :

".....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."

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 :

"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."

CONCLUSION

15. In view of the aforesaid analysis and the parameters referred to above, there being no infirmity in the opinion of the RMB. Accordingly, the OA 101/2019 stands dismissed being devoid of merits.

16. There is no order as to costs.

Pronounced in the open Court on this 22^{ed} day of August, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (J)

/nmk/

OA NO. 101/2019
Ex Sgt Dilip Kumar Mishra