COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Suppl.
2.

OA 1021/2019 with MA 1691/2019
L Ex Sgt Rohit Singh ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents
For Applicant : Mr. Baljeet Singh, proxy for
Mr. Durgesh Kumar Sharma, Advocate
For Respondents : Mr. Arvind Kumar, Advocate

CORAM
HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
03.01.2024

Vide our detailed order of even date, we have allowed the OA 1021/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

POOJA

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1021 of 2019
with
M.A. No. 1691 of 2019

In the matter of :

Ex Sgt Rohit Singh ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Shri Durgesh Kumar Sharma, Advocate

For Respondents : Shri Arvind Kumar, Advocate

CORAM:

HON'BLE Ms. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

O R D E R

M.A. No. 1691 of 2019 :

Vide this application, the applicant seeks condonation of 2421 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. 1021 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) Quash and set aside the impugned letters dated 10 May 2012 & 09 May 2019.***
>
> ***(b) Direct Respondents to grant Disability Pension @ 50% after rounding off from 20% for life as recommended by RMB to the applicant with effect from 01 Feb 2012 i.e. the date of discharge from service with interest @ 12% p.a., till final payment is made.***
>
> ***(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.***

BRIEF FACTS

2. The applicant, having been found medically and physically fit after thorough medical examination, was enrolled in the Indian Air Force on 16.03.1993 in the 'AYE' medical category, and was discharged from service, at his own request, on 31.01.2012 being in low medical category

'A4G3 Permanent'. The Release Medical Board (RMB) held on 30.01.2012 assessed the applicant's disability 'ULCERTATIVE COLITIS' @ 20% for life. However, the same was considered as 'neither attributable to nor aggravated by service' (NANA)'. Based on the recommendations of the RMB, the disability pension has been denied to the applicant.

3. The initial claim of the applicant for disability pension was rejected by the AOC AFRO upholding the recommendations of the RMB, vide letter No. RO/3305/3A Med Cat (D) dated 26.04.2012. The decision was communicated to the applicant vide letter No. RO/3027/747549/01/12/P&W (DP/RMB) dated 10.05.2012 with an advice to prefer an appeal within six months from the date of receipt of the letter. The applicant, instead of filing an appeal, sent a legal notice dated 04.04.2019 which was replied to and the claim for grant of disability pension was rejected by the respondents vide letter No. Air HQ/99798/1/747549/DAV/DP/CC dated 09.05.2019. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in

accordance with Section 21(1) of the AFT Act, we take up the present OA.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the Air Force service, was declared fully fit medically and physically and no note was made in his medical record to the effect that he was suffering from any disease at that time. It was submitted further on behalf of the applicant that during his entire tenure of service, the applicant was posted to various Air Force units where he had participated in various operations; that the applicant held various appointments including working on advance Fighter aircraft and was exposed to various explosives and served in various areas having harsh climatic conditions i.e. extreme hot/cold weather. On 25.09.1995, the applicant was posted to 05 FBSU, Uttarlai, Rajasthan, a prime forward fighter Squadron base station, and worked in the said unit, where the 24-hours fighter servicing and supports are provided to Fighter aircraft in shift duty and he had to work for 16-17 hours per day in extreme hot and dry cold weather of Rajasthan till September, 1998.

5. The applicant further submitted that from 28.09.1998 to 28.04.2002, he was posted at 9 BRD at Pune, where he performed field duties and Guard duties at night and performed strenuous and stressful duties beyond working hours leaving very little time to rest and proper sleep and he used to stay alone and away from his family; the applicant was also given PAD/GD duties where his duties were directly connected with war preparedness capacity of IAF; that in April, 2002, the applicant was posted to J&K region, which is known for its harsh weather condition, upto June, 2004 and thereafter he was posted to Air Force Station Narela, where he used to perform duty on equipments throughout day and night with unscheduled sleeping hours to upgrade the system at the station and, thus, all this caused a lot of stress and strain not only mentally but also physically. The learned counsel further submitted that because of discharging duties for prolonged period in such strenuous and challenging conditions of service with tremendous mental and physical pressure, the applicant's health got adversely affected and thus, on 07.03.2005, the applicant was diagnosed with 'Ulcerative Colitis' and from 03.07.2006,

he was placed in low medical category A4G3 Permanent. The learned counsel further submitted that even after suffering from the above disability, the applicant was posted to Air Force Station Barrackpore in a very high humidity prone climate and had to perform strenuous duty with excessive work load, extra working hours, unscheduled sleeping hours, which resulted in worsening his medical condition.

6. The learned counsel for the applicant placed reliance on the judgments of the Hon'ble Supreme Court including ***Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316]*** and ***Union of India and Ors. Vs. Rajbir Singh [(2015) 12 SCC 264]***, 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 a military 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 to be due to service conditions. It was reiterated on behalf of the applicant that the Hon'ble 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 learned counsel further submitted that the Tribunal has already granted disability pension to many similarly situated persons.

7. *Per contra,* the learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed since the RMB, being an Expert Body, found the disability as 'Neither Attributable to Nor Aggravated by Service' for the reasons mentioned therein. The learned counsel denied the contentions made on behalf of the applicant regarding hard and strenuous postings and stated that all postings were peace area postings and duties were of daily routine nature. Further, it was submitted by the learned counsel that as the applicant's disability does not fulfil one of the twin conditions in terms of Regulation 153 of

the Pension Regulations for the Air Force, 1961 (Part-I) of the disability being attributable to or aggravated by military service, the applicant is not entitled to disability pension and, therefore, the OA deserves to be dismissed.

8. The applicant filed a rejoinder to the counter affidavit of the respondents and repudiated the averments made by the respondents. The applicant also filed a number of medical case sheets/documents pertaining to the period while in service and even after retirement till the year 2019 to show that he has been suffering from the disability in question due to which he is unable to lead a normal life and that he is continuously under treatment to avoid the flare up of the said disease.

ANALYSIS

9. We have heard the learned counsel for the parties and have gone through the records produced before us. We find that as the disability suffered by the applicant has been assessed @ 20%, the issue which needs to be considered is as to whether the disability is attributable to or aggravated by service or not.

10. It is an undisputed fact that at the time of joining the Indian Air Force on 16.03.1993, the applicant was found medically and physically fit and was in medical category 'AYE' and the date of the onset of the present disability is 07.03.2005, which goes to show that the same had occurred after almost 12 years of service and the applicant was discharged from service on 31.01.2012, at his own request, in permanent low medical category A4G3(P).

11. The law on the issue of attributability 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 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 a military 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."

12. The Hon'ble Supreme Court in the case of ***Union of India & Ors. Vs. Rajbir Singh [Civil Appeal Nos. 2904 of 2011]*** 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. 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 white '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 contacted 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.

11. Aggravation:

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High Altitude etc."

Thus, the ratio of the verdicts in ***Dharamvir Singh Vs. Union of India & Ors. [(2013) 7 SCC 316*** and ***Union of India Vs. Rajbir Singh [(2015) 12 SCC 264]***, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

14. Furthermore, Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service' provides as under:-

"423. (a). For the purpose of determining whether the cause of a disability or death resulting from disease is or not attributable to Service. It is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Area/Active Service area or under normal peace conditions. It is however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidences both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in case occurring in Field Service/Active Service areas.

(b). Decision regarding attributability of a disability or death resulting from wound or injury will be taken by the authority next to the Commanding officer which in no case shall be lower than a Brigadier/Sub Area Commander or equivalent. In case of injuries which were self-inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.

(c). 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 Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have

arisen in Service if no note of it was made at the time of the individual's acceptance for Service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(d). The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, in so far as it relates to the actual causes of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority.

(e). To assist the medical officer who signs the Death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on :

(i) AFMSF – 16 (Version – 2002) in all cases

(ii) IAFY – 2006 in all cases of injuries.

(f). In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the Col (Med) Div/MG (Med) Area/Corps/Comd (Army) and equivalent in Navy and Air Force."

(Emphasis supplied)

has not been obliterated.

15. As per the RMB opinion, the applicant's disability was held as neither attributable to nor aggravated by service there being no stress and strain of service and on the basis of

Para 61 of Chapter VI of the Guide to Medical Officers (Military Pensions) 2002, amended 2008 [hereinafter referred to as 'GMO (MP) 2008'], wherein with regard to 'Peptic Ulcer', it is suggested that in the event of development of ulcer under the service conditions with no evidence of commencement of the injurious process before entering into service and if the onset is in field area/CI Ops area/HAA or during Ops, the disability is to be accepted attributable to service and if the onset is in a peace area, the disability is to be conceded as aggravated by service. The aforesaid Para 61 is reproduced below :

> ***"61. <u>Peptic Ulcer</u>. Peptic ulcer can occur at lower oesophagus, stomach, duodenum and an anastomotic stromal ulcer in post gastrojejunostomy. Although some constitutional predisposition to ulcer exists, infection with Helicobacter pylori accounts for majority of duodenal ulcer and gastric ulcer. Service in HAA/active operational areas and dietetic compulsions pre-dispose to peptic ulcer increasing the risk of complication and reducing the response to therapy. NSAIDS are held responsible for small proportion of cases of peptic ulcer. When an ulcer develops under service conditions and there is no evidence that injurious process commenced prior to entry in service the disability is accepted as attributable to service in case the onset is in Field area/CI Ops area/HAA or during Ops. Aggravation will be conceded if the onset is in a peace area."***

16. However, it would be helpful to refer to Para 44 of the GMO (MP) 2008 related to 'Inflammatory Bowel Disease',

which, in our view, is the appropriate provision for determining the aggravation of the disability in question, which reads as under :

> ***"44. <u>Inflammatory Bowel Disease</u>. Opinion has been divided over the origin or inflammatory bowel disease. Infective agents such as RNA viruses, Mycobacterium kansasi, Pseudomonas, Anaerobes, Y enterocolitica and some immunological aberrations and many psychosomatic, dietary, vascular, traumatic, hormonal and other mechanisms have been implicated in genesis of these diseases.***
>
> ***<u>The diseases falling in the group is ulcerative colitis</u> and Crohn's disease and these are characterized by unpredictable exacerbations and remissions. Relapse is often associated with emotional stress, inter-current infection or use of antibiotics. Stress and strain of service will materially influence the course of disease and aggravation can be conceded.***
>
> ***The complications of these diseases are fissure in ano, stricture rectum, and fistula. The extra intestinal complications are ankylosing spondylitis, uveitis, cirrhosis and amyloidosis. While assessing the disease, the assessment for the complication should be kept in mind."***

From the above, we find that worsening of disease/ exacerbations and remissions can be unpredictable in this disease and relapse is linked with emotional stress, use of antibiotics etc. and aggravation of the disease is to be conceded for the disease being influenced by the stress and strain of service.

17. In the present case, the applicant suffered from the Ulcerative Colitis on 07.03.2005 for which he was treated in the BHDC, Delhi Cantt and accordingly, the applicant was

prescribed medications. We find that in the opinion of MD DM FIACM Classified Specialist (Medicine & Gastroenterology) dated 16.08.2005, it was indicated that there is no family history of similar disease in respect of the applicant. Although in the opinion of the same specialist dated 05.07.2008 it is stated that there has not been any relapse for 3 years, however, it can be seen that the applicant was under continuous treatment/medications throughout the service after onset of the disease in 2005 and even after retirement which is apparent from the medical documents filed by the applicant with the rejoinder spreading from 07.07.2017 to 20.11.2019. As per the provisions contained in Para 44 of the Chapter VI of the GMO (MP) 2008 as reproduced hereinabove, there is possibility of relapse of the disease.

18. In the present case, it is not disputed that the applicant, in his entire service career, was posted in different stations having different climatic and environmental conditions. Although the disability was noted when the applicant was in a peace area, the strenuous and stressful duties previously performed in harsh and extreme weather

conditions having contributed to mental stress and strain resulting in the disability cannot be overlooked. It has already been observed by the Tribunal in large number of cases that military services in peace station have their own pressure of rigorous military training and associated stress and strain of the service in peace station which should be taken into consideration for the purpose of granting disability pension. It may also be taken into consideration that the most of the personnel of the armed forces, during their service, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. Moreover, there is no note made in the medical documents of the applicant that he was suffering from any disease at the time of joining the service. There is no record to show that the applicant has suffered the disability due to hereditary reasons and admittedly, the disability has occurred after serving for prolonged period. The respondents, in their counter affidavit and during arguments, failed to show any specific or cogent ground to prove that the disability had no connection with the service. We are, therefore, of the considered view that the benefit of doubt in

these circumstances ought to be given to the applicant in view of the settled law by virtue of the verdicts of the Hon'ble Supreme Court as referred to hereinabove on the aspect of attributability/aggravation and thus the disability suffered by the applicant is held to be attributable to and aggravated by the military service.

19. 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 disability 'Ulcerative Colitis' assessed @ 20% with rounding off benefit for life from the date of discharge.

CONCLUSION

20. In view of the above, the OA 1021 of 2019 is allowed. The respondents are directed to grant the disability element of pension to the applicant for the disability 'Ulcerative Colitis' @ 20% for life, which is directed to be rounded off to 50% for life from the date of discharge 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 has filed the present OA after a considerable delay, in view of the law

laid down in the case of *Tarsem Singh (supra)*, arrears will be restricted to commence to run from three years prior to the date of filing of this OA i.e. 02.07.2019.

21. 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.

22. There is no order as to costs.

Pronounced in open Court on this 31st day of January, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/ng/