

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

O.A. No. 108 of 2017

In the matter of :

JWO Gian Chand Drolia

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Janak Raj Rana, Advocate

For Respondents : Shri Y.P. Singh, Advocate

CORAM :

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

O R D E R

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) For quashing the impugned order No. Air HQ/798/1/613202/DAV/DP/CC dated 07 Nov 2016, rejecting the disability pension claim to the applicant.

(b) To direct the respondent(s) to grant disability pension as per his entitlement immediately claimed by the applicant also with all

consequential benefits and any other benefits from the date of retirement.

(c) Applicant be granted the cost of petition for unnecessary and pecuniary loss caused by the respondents and forcing him to knock the doors of this Hon'ble Tribunal for his legal right. And

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

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Air Force on 10.11.1972 and was released from service in February, 2007 in low medical category CEE(H)(P). The Release Medical Board (RMB) held on 06.02.2007 assessed his disability ID CSOM LT UNSAFE OPTD @ 20% for two years and the same was held as 'neither attributable to nor aggravated by military service (NANA)'.

3. Initially, the case of the applicant for grant of disability pension was rejected by the respondents vide letter dated 07.11.2016. Thereafter, on coming to know about the judgment of Hon'ble Supreme Court in Dharamvir

Singh Vs. Union of India & Ors., the applicant has filed the present OA for seeking disability pension.

4. Learned counsel for the applicant submitted that the applicant, at the time of joining the service, 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 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 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 that in March, 2005, while posted in Unit 265 SU, Jaisalmer, which was situated very close to runway end, resulting in the loud noise/sound while take-off of the aircrafts which impact the human body and thus the applicant has suffered with the disability.

5. It is submitted that during the annual medical examination in January, 2006, the disease suffered by the applicant was detected and he was advised to undergo

surgery, which was done on 24.01.2006 where MRM was done and post-operation period remained uneventful. Learned counsel further contended that in the summary and opinion of the Classified Specialist, the applicant was recommended to be released in medical category CEE(H) permanent and percentage of the disablement was assessed @ 20% and accordingly, the applicant was brought before the RMB and he was opined to be fit for release in medical category CEE (Permanent).

6. Learned counsel for the applicant further submitted that the applicant's case is squarely covered by the judgment of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316]** wherein the Apex Court held 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 and that the onus of proof of condition of non-entitlement is not on the claimant but on the respondents and if the worsening of a condition persists till the time of discharge, aggravation is to be accepted. The learned counsel, 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.

7. *Per contra*, learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed for since the RMB, being an expert body, found the disability as "Neither Attributable to Nor Aggravated by Military Service" on the ground that the disability ID CSOM Lt Optd is constitutional in nature and that the service conditions did not contribute to the onset of disease, and that the applicant was given necessary treatment without any delay. Learned counsel further submitted that the applicant's disability does not fulfil the necessary conditions for being eligible to get disability pension in terms of Regulation 153 of the Pension Regulations for the Air Force, 1961 (Part-I) of being assessed at 20% or more and being attributable to or aggravated by military service, the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed.

8. We have heard the submissions made by the learned counsel for the parties and have gone through the records produced before us.

9. 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."

10. The 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 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....."

11. 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....."

12. Further, we may refer to Para 57 of Chapter VI of the Guide to Medical Officers (Military Pensions) 2002, wherein various factors which lead to the disease Otitis Media during service to the army personnel have been provided. Para 57 of GMO above is reproduced as under:-

"57. Otitis Media

Media Otitis media can be classified into acute and chronic, based on extent of inflammatory reaction and the presence or absence of suppuration. It should be noted that an initial non-suppurative condition may proceed to suppurative one and chronicity if neglected or inadequately treated. The common predisposing factors are upper respiratory tract infection, infection from postnasal packs in the treatment of epistaxis and rarely as a manifestation of allergy.

Chronic otitis media may be :

(a) Active: When there is pus discharge

(b) Quiescent: With intermittent pus discharge for a period less than 6 months.

(c) Inactive: Cessation of discharge for six months without resumption. It may reactivate by reinfection through perforation of tympanic membrane.

(d) Healed: Total extinction of disease and healing of perforated tympanic membrane.

Chronic suppuration in attic and antrum associated with perforation (attic) and posterior marginal perforation and complications like cholesteatoma and polyp are ominous signs and carries a risk of bone destruction, recurrence after surgery.

If chronic suppurative otitis media originates during service it should be accepted as attributable to service. When diagnosed comparatively early in service there may be evidence of cholesteatoma, polypi and granulation, which would show beyond reasonable doubt that the condition existed before service. This, however, would not necessarily be the case when the disease is discovered for the first time after long service and in the absence of any pre-service ear trouble. The importance of a detailed study history and findings in the member's original service documents cannot be over-emphasised. However, a history of a single isolated attack of acute otitis media in childhood cannot, in the absence of any intervening history of aural disease, be held to be the commencement of an injurious process which only gave rise to symptoms in service many years later.

The pre-existing disease can be aggravated by such conditions as exposure to adverse climatic conditions such as damp or cold, debilitating disease, exposure to gun fire or bomb bursts and swimming in infected waters."

From the above, it is borne out that the attributability of the disability due to service is to accepted if chronic suppurative otitis media originates during service. In the present case,

the applicant, after having served for about 33 years, was diagnosed with the CSOM (Lt) in January, 2006. During service, the applicant was posted to various locations having different and difficult weather, environmental and geographical conditions, which may have caused the disability. It was also submitted by the applicant that the during posting at Unit 265 SU, Jaisalmer, the unit was situated very close to runway end, and the loud sound during take-off of the air crafts badly affected the applicant resulting in the hearing loss in one of the ear. It is admitted that the applicant had undergone surgery for the said disease, however, it may also be taken into consideration that the chances of relapsing would have been there even after surgery.

13. In the facts and circumstances of the case and on the basis of the law laid down in the case of *Dharamvir Singh (supra)*, which have been followed in various subsequent decisions of the Hon'ble Apex Court as well as the Tribunal, we are of the considered view that the disability ID 'CSOM Lt Optd' suffered by the applicant has to be held attributable to/aggravated by the military service. However, while the

applicant's disability was assessed by the RMB @ 20% for two years, he was advised to review after two years or in case of any increase in symptoms. There is nothing on record to show that the applicant had gone for review after two years or as advised and that any symptoms or any problems arose with regard to the said disease. In this view of the matter, we deem it appropriate that the applicant may be granted disability pension for two years from the date of release from service.

14. In view of the afore-referred judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension in respect of disability i.e. CSOM Lt Optd @ 20% for two years from the date of release. The respondents are directed to grant disability element of pension to the applicant @ 20% with the benefit of rounding off to 50% for two years from the date of release from service 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.

15. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within a

period of 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.

16. There is no order as to costs.

Pronounced in open Court on this 17th day of September, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P.M. HÂRIZ]
MEMBER (A)

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