

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

O.A. No. 1093 of 2019
with
M.A. No. 600 of 2020

In the matter of :

Col J P Hiremath (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Shakti Chand Jaidwal, Advocate

For Respondents : Shri Shyam Narayan, Advocate

CORAM :

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

ORDER

M.A. No. 600 of 2020 :

Vide this application, the respondents sought for condonation of 20 days' delay in filing the accompanying counter affidavit. In view of the averments made in the application, the delay is condoned and the counter affidavit is taken on record.

MA stands disposed of accordingly.

O.A. No. 1093 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) Set aside the impugned order dated 18.10.2017 passed by the respondents, rejecting the appeal of the applicant for grant of disability element of pension;

(b) Direct the respondents to process case of the applicant for grant of disability element of pension at an early date, as it has been more than six months from the date of the Second Appeal Medical Board, which was conducted on 21.12.2018.

(c) Direct the respondents to treat the disabilities of the applicant namely "NIDDM and VARICOSE VEIN LEG (GSU)" as attributable to/aggravated by military service and also assign appropriate percentage for degree of disablement to the disability on account of VARICOSE VEIN;

(d) Direct the respondents to grant disability element of pension to the applicant @ 30% for life w.e.f. 01.04.2006, as composite degree of disablement of applicant's disabilities has been assessed @ 30% for life by the RMB;

(e) Direct the respondents to pay disability element of pension to the applicant @ 50% for life w.e.f 01.04.2006 by rounding off applicant's disabilities from composite 30% to 50% as per Govt. Policy dated 31.01.2001.

(f) Direct the respondents to pay 10% interest to the applicant on arrears of disability pension w.e.f 01.04.2006 and/or

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

2. The facts of the case in brief as stated by the applicant are that, after having been found fully fit, the applicant was commissioned in the Indian Army on 24.12.1972 and was released from service on 31.03.2006 in low medical category S2H1A1P2E1. The Release Medical Board (RMB) held on

31.08.2005 assessed the applicant's disabilities (i) NIDDM @ 30%, (ii) OBESITY @ 5-9% and (iii) VARICOSE VIEN LEG GSU @ Nil, with composite degree of disablement @ 30% for life. While the disabilities (i) and (ii) were held as 'neither attributable to nor aggravated by military service', the third disability i.e. Varicose Vein was conceded as 'aggravated by service'. The initial claim of the applicant for grant of disability pension was rejected vide letter dated 19.10.2007. The applicant preferred first appeal against the rejection of the claim on 19.06.2017, which was not accepted by the respondents vide letter dated 18.10.2017 as being time barred.

3. Feeling aggrieved, the applicant filed O.A. No. 539 of 2018 before the Tribunal (PB) seeking grant of disability element of pension with broad-banding benefits, which was disposed of by the Tribunal vide order dated 13.07.2018 directing the respondents to treat the said OA as the second appeal and decide the same on merits without going into the question of technicality of the same being time-barred and to pass a speaking order within a period of six months. In

compliance of the aforesaid order of the Tribunal, the respondents considered the appeal and a second Appeal Medical Board (SAMB) of the applicant was held on 23.10.2018 at Base Hospital, Delhi Cantt. However, according to the applicant, he did not get any information with regard to the SAMB nor did he get any disability pension. Hence, this OA.

4. 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 at the time of retirement, the applicant was in permanent low medical category, 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 further submitted that the respondents erred in considering the disabilities 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 postings at

high altitude area/field areas in extreme climatic conditions and participated in various operations during his service tenure; the applicant was sent on deputation to Special Frontier Force in 1977 at Ladakh (HAA) for three years and to National Security Guards in 1989 followed by posting at J&K in 1991, where he carried out intense counter insurgency operations for two years; that the applicant was posting as CO of 14 GUARDS in Siachin Glacier (Northern), the highest battle field; and thereafter he was posted as Training Battalion Commander in Guards Training Centre where he had to train 2400 recruits and all these service conditions put tremendous mental and physical pressure on the applicant and had impacted adversely on the health of the applicant and he was found suffering from obesity. Learned counsel again submitted that in 1999 to 2000, the applicant was again posted to J&K (HAA) for CI Ops; that the applicant continued to serve at high altitude areas and thus due to stress and strain of service, the applicant was detected with Varicose Vein Rt Leg (GSU) in 2002 due to prolonged standing and marching during his postings at HAA while undertaking

patrolling on foot for long hours and thereafter in 2003, the applicant was diagnosed with NIDDM. Learned counsel contended that even after the second appeal medical board was conducted, the applicant was neither granted disability pension nor any communication was received to this effect.

5. 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, in the subsequent second appeal medical board, the disability Varicose Vein was held as aggravated by service and was assessed @ 20% for life. He drew our attention to various rules and regulations which provide 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.

6. 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. 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.

7. *Per contra*, learned counsel for the respondents submitted that initially the disability pension was denied to

the applicant as the RMB assessed the disabilities of the applicant (i) NIDDM and (ii) Obesity as 'neither attributable to nor aggravated by military service' and the third disability i.e. Varicose Vein Rt Leg was assessed @ Nil, however, in the second appeal medical board (SAMB), while the assessment of the two disabilities i.e. NIDDM and Obesity remained the same, the disability Varicose Vein was re-assessed @ 20% for life from the date of SAMB and for the intervening period from the date of retirement to the date of SAMB. Learned counsel further added that on the recommendations of the SAMB, the applicant was sanctioned disability element of pension for the disability ID Varicose Vein Rt Leg @ 20% for life with broad-banding benefit from the date of SAMB. Learned counsel contended that the respondents' action is justified and appropriate in accordance with law there being no illegality, the OA deserves to be dismissed.

8. The applicant then filed a rejoinder to submit that the SAMB had arbitrarily assessed the disability ID Type 2 Diabetes Mellitus as NANA on the ground that its onset was in peace station, which is against the Rule 423 of Chapter VII of

the General Rules of Guide to Medical Officers (Military Pensions) 2002, which has been taken note of in the judgment of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union of India* wherein it was stated that it is immaterial whether the cause giving rise to the disability or death in an area declared to be a field service/active service area or under normal peace conditions and that it is essential to establish whether the disability or death bore a causal connection with the service conditions. The applicant submits that the respondents failed to consider the fact that the NIDDM was caused due to the four postings continuously in the most stressful and uncongenial environments i.e. tenure in NSG in tents (1989-91), posting to a unit in CI Ops in tents/bivouks (1991-93), being CO in Glacier 93-95 and as Training Battalion Commander at KAMPTEE (1995-97). It is contended by the applicant that during all these postings, he had to work almost round the clock/be on call under improper dietary regime and had to manage with fast foods. It was further submitted that the SAMB assessed the NIDDM @ 30%, Obesity @ 5-9% and Varicose Vein as 20% and the composite

degree of disablement was assessed @ 50% for life and that even the composite degree for the two disabilities i.e. NIDDM and Varicose Vein comes to 50% and thus the applicant is entitled to 75% disability pension on being broad-banded. It is also stated by the applicant that, as per the SAMB recommendations, he was granted the disability element of pension but from 04.12.2018 for life, instead of date of retirement till the date of SAMB i.e. 23.10.2018. In this regard, the applicant relied upon the judgment dated 08.04.2019 of Hon'ble Supreme Court in **Madan Prasad Sinha @ Sanatan Baba Vs. UOI & Ors. [Civil Appeal No. 11485 of 2018]** and the order of AFT (RB, Chandigarh) in the case of **Manjit Singh Vs. UOI & Ors. [O.A. No. 3386 of 2012]**. The applicant, therefore, prayed that he may be allowed disability element of pension @ 50% for life from the date of retirement along with broad-banding benefit @ 75% for life.

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

10. Having gone through the record, we find that at Part IV of RMB, the date of origin of the disability 'Obesity' is mentioned as March, 1998 and the disability 'NIDDM' is mentioned as April, 2003. The disability 'Varicose Vein' had occurred in September, 2002. He was under treatment for the said diseases. In this case, although the service conditions performed by the applicant were challenging and stressful as explained in the petition, however, obesity cannot be held attributable to service without any specific ground for that. The armed forces personnel are trained to combat the stressful and challenging war-like conditions. After having suffered with obesity, the applicant was posted to peace areas and there he could have managed to reduce his weight. Even at the time of RMB held in August, 2005 in the Part II of RMB – Medical Examination, the weight of the applicant has been recorded as '106 Kg.', whereas the ideal weight for the applicant is indicated as '**73 Kg**'. The disability NIDDM had occurred in April, 2003 i.e. after five years.

11. As per clinical material available on the internet, obesity is closely linked to insulin resistance or diabetes; such as in

National Institutes of Health page, it is stated, *“The accumulation of an excessive amount of body fat can cause type 2 diabetes, and the risk of type 2 diabetes increases linearly with an increase in body mass index. Accordingly, the worldwide increase in the prevalence of obesity has led to a concomitant increase in the prevalence of type 2 diabetes.....”*. Therefore, the disability NIDDM is connected with the applicant’s being obese, which itself can lead to many diseases like, high blood pressure etc., which are commonly seen in obese patients. At the time of RMB, the applicant was overweight by 33 Kg. despite the fact that he was found suffering from obesity in 1998. In our opinion, the disability ‘Obesity’ is due to interplay of genetic metabolic and lifestyle factors and due to failure in maintaining the ideal body weight which can be managed by regular exercise and restricting diet. Considering the aforesaid and the fact that the applicant is already overweight/obese in 1998 also and at the time of RMB in August, 2005, his weight was found to be 106 Kg, meaning thereby the applicant had remained obese over a long period of time which lent itself for the other disabilities and thus we

uphold the opinion of the RMB that there is no causal connection between the disabilities and the military service and thus the two disabilities have rightly been assessed as neither attributable to nor aggravated by service.

12. So far as the disability ID Varicose Vein Rt Leg is concerned, the RMB held in August, 2005 had held the same as 'aggravated by military service due to prolonged standing and marching', however, the degree of disablement was assessed as 'Nil', which, according to the respondents, was done on the ground that while undergoing treatment, the applicant was advised surgery for the said disease and he refused to undergo any surgery. From the record, we find that in compliance with the directions of the Tribunal vide order dated 13.07.2018 passed in OA 539/2018 (earlier filed by the applicant), the second appeal medical board (SAMB) proceedings dated October, 2018 re-assessed the disabilities of the applicant as under :

Disabilities (As numbered in Para I Part IV)	Percentage of disablement with duration	Composite assessment for all disabilities with duration	Disability Qualifying for Disability Pension with	Net Assessment Qualifying for Disability Pension (Max 100%) with duration

		(Max 100%) with duration	duration	
(i) Type 2 diabetes mellitus	30% for life			20% for life wef the date of the Med Bd.
(ii) Obesity	5-9% for life	50% for life	Varicose veins Rt leg (GSV) for life	20% is also recommended for the intervening period wef date of retirement till the date of this Med Bd, subject to Adm approval.
(iii) Varicose veins Rt leg (GSV)	20% for life			

Thus, in the SAMB, while the assessment of the first two disabilities i.e. Obesity and NIDDM remained the same, the degree of disablement of the disability 'Varicose Veins Rt Leg' was assessed at 20% for life from the date of the medical board and also for the intervening period i.e. from the date of retirement till the date of the SAMB, meaning thereby the disability pension was recommended with effect from the date of retirement and continuously for life. However, as stated by the respondents in the pleadings, the applicant was granted disability element of pension from the date of SAMB with broad-banding benefit vide letter dated 26.06.2019.

13. In this regard, it would be pertinent to refer to the judgment of the Hon'ble Supreme Court in the case of **Ex**

Sapper Mohinder Singh Vs. Union of India & Ors. [Civil Appeal No. 104 of 1993] decided on 14.01.1993, wherein the Hon'ble Apex Court has observed that the administrative authority cannot sit over the opinion of a medical board while dealing with the case of grant of disability pension. The observations made in the judgment in the case of *Ex Sapper Mohinder Singh (supra)* being relevant is quoted below :

“From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core.”

14. In view of the decision of the Hon'ble Supreme Court in *Ex Sapper Mohinder Singh (Supra)*, we are of the considered view that the claim for disability pension was wrongly interfered with by the administrative authority and is unsustainable in law in view of the fact that as per the findings of SAMB, the

applicant's disability i.e. Varicose Veins Rt Leg' was held aggravated by military service and the qualifying degree of disablement for disability pension was assessed as 20% for lifetime starting from the date of retirement.

15. 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 evidence 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.”

16. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability pension for the disability ‘Varicose Veins Rt Leg’ @ 20% for life with effect from 01.04.2006 (the date of his retirement being 31.03.2006), which is directed to be broad-banded to 50% for life 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, the arrears as directed be paid after adjusting the amount of disability element of pension already paid to the applicant.

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

18. In view of the above, pending MAs, if any, stand closed.
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. HARIZ]
MEMBER (A)**

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