

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

O.A. No. 1123 of 2019

In the matter of :

Sep Upendra Kumar (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Virender Singh Kadian, Advocate

For Respondents : Ms. Barkha Babbar, Advocate

CORAM :

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

ORDER

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'the AFT Act'), the applicant has filed this OA seeking the following reliefs in Para 8 thereof :

- (a) ***Quash and set aside the impugned letter B/ 40502/ 143/ 2019/ AG/ PS-4 (Imp-II) dated 14.05.2019 And/or***
- (b) ***Direct respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant***

- disability element of pension with benefits of broad banding/rounding off the same. and/or*
- (c) *Direct respondents to pay the due arrears of disability element of pension with interest @ 12% p.a. from the date of retirement with all the consequential benefits.*
- (d) *Any other relief which the 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 Army on 01.12.2001 and was discharged from service on 30.11.2018 being in low medical category S1H1A1P2(P)E1. Before his discharge, the applicant was brought before the duly constituted Release Medical Board dated 12.06.2018, which assessed the disability of the applicant i.e. BICUSPID AVD WITH ANNULAR AND AORTIC ROOT DILATION (OPTD) AVR DONE @ 30% for life and the same was considered as 'neither attributable to nor aggravated by service' (NANA).

3. The initial claim of the applicant for grant of disability element of pension was rejected by the respondents. Against the said rejection, the applicant preferred his first appeal

dated 10.12.2018 which was rejected by the respondent vide letter dated 14.05.2019, impugned herein, stating the reason that ID is a congenital valvular heart disease which may be missed at the time of entry into the service. Hence, this OA.

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was found mentally and physically fully fit and no note was made in his medical record to the effect that he was suffering from any disease at that time and, therefore, as the disability arose during the service, the same should be held as attributable to the military service and any medical disability contracted by him during the course of his service is deemed to be attributable to/aggravated by the stresses and strains of service. The learned counsel explained about the stressful and challenging conditions of service performed by the applicant having served in various places in different environmental and geographical conditions in his prolonged service. It is the contention of the learned counsel that the respondents failed to consider the fact that the Categorisation Medical Board held on 03.02.2015 had assessed the disability

of the applicant as 'attributable to military service' and thus their action in denying the disability pension to the applicant is unjustifiable and arbitrary as the disability in question was diagnosed in July, 2009 during service, and the applicant suffered the said ailment because of stress and strain of service.

5. The learned counsel for the applicant further submitted that the instant matter is squarely covered by the judgment of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316]** and in **Union of India & Anr. Vs. Rajbir Singh [2015 (2) SCALE 371]** 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 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 being in low medical category, any deterioration in his health, which may have taken place, shall be presumed to be 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 learned counsel also referred to Rules 5 and 14(b) of the Entitlement Rules, 1982 to submit that the deterioration of health is to be presumed to be due to service conditions; Rule 9 regarding onus of proof which lie 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. The learned counsel, 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.

6. *Per contra*, the learned counsel for the respondents contended 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 Military Service" on the ground that the disability was a congenital valvular heart disease and that the applicant was treated promptly and is unaffected by service conditions and the said disability of the applicant was of constitutional in nature. The learned counsel contended that the applicant's disability does not qualify for the disability pension in view of Regulation 53 of the Pension Regulations for the Army, 1961, which provides that the disability pension is granted to the individual released/retired/discharged from service when the disability should be either attributable to or aggravated by military service and minimum assessment thereof is mandatorily required to be 20% or more and, therefore, the OA deserved to be dismissed.

7. We have heard the learned counsel for the parties and have gone through the records produced before us. As the disability of the applicant has been assessed @ 30% for life, the

only issue which needs to be considered in this case is as to whether the disability of the applicant i.e. 'Bicuspid AVD with Annular and Aortic Root Dilation' is attributable to or aggravated by military service or not.

9. The disability in question i.e. 'Bicuspid AVD with Annular and Aortic Root Dilation', it is pertinent to mention herein that after perusal of available scientific literature in public domain, we find that the disability Bicuspid AVD is a congenital/hereditary disease which appears in a person from birth. Thus, the contention of the applicant that the disability in question has any causal connection whatsoever with the performance of military service for the grant of disability pension is misconceived. In this regard, we may refer to Para 83 of the Guide to Medical Officers (Military Pensions), 2002 amendment 2008 (hereinafter referred to as 'GMO (MP) 2008').

The same reads as under:-

"83. Valvular Heart Disease. The principal causes of valvular heart disease are Rheumatic carditis, other causes being congenital, ischemic heart disease, infective endocarditis and cardiomyopathy. It takes several years for valvular disease to develop from the onset of rheumatic fever. Attributability or

aggravation can be conceded by judging the merit of each case and also considering the primary disease. Mitral valve prolapse (floppy mitral valve) is commonly detected in Armed Forces. It is primarily a congenital abnormality. Hence it will be conceded as neither attributable nor aggravated by military service."

With regard to congenital heart disease, Para 22 of the GMO (MP) 2008 can also be relied upon, which reads as under:-

"22. Congenital Heart Disease. It has been routinely observed that cases of congenital heart diseases like atrial septal defect/Mitral valve prolapse having escaped detection at the time of recruitment become symptomatic and detected very late in service. These will be conceded as neither attributable nor aggravated by military service."

10. From the aforesaid provisions, it is clear that the disability 'Bicuspid AVD' is a congenital heart disease, detection of which could escape while medical examination held before joining of service and can be detected very late in service. In view of this, it is apparent that the disability of the applicant has no nexus with service and has no causal connection with the military service since the applicant's disability is congenital which has no relationship with the performance of any military

duty. The RMB has, therefore, rightly assessed the disability of the applicant i.e. 'Bicuspid AVD with Annular and Aortic Root Dilation' as neither attributable to nor aggravated by service.

11. In view of the aforesaid discussion, the disability ID 'Bicuspid AVD with Annular and Aortic Root Dilation', having no causal connection with the military service, is not accepted as attributable to or aggravated by military service and thus the applicant is not entitled to disability pension for this disability. Thus, we do not find any infirmity in the opinion of the RMB.

12. Accordingly, the OA 1123 of 2019 is dismissed being devoid of merit. There is no order as to costs.

Pronounced in open Court on this 9 day of July,
2024.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**

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