

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

E..

OA 1140/2020 with MA 1303/2020

Ex HAV/CLK Mahesh Prasad
VERSUS

..... Applicant

Union of India and Ors.

..... Respondents

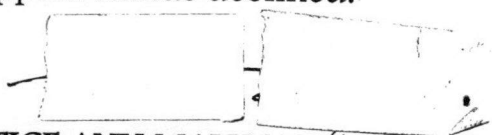
For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Mr. Arvind Patel, Advocate

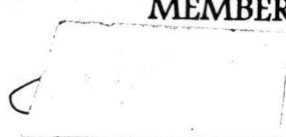
CORAM

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

ORDER
09.01.2024

Vide our detailed order of even date; we have allowed the OA 1140/2020. 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)

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For Applicant : Mr. Praveen Kumar, Advocate

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CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

MA 1303 / 2020

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of **8270** days in filing the present OA. In view of the verdicts of the Hon'ble Supreme Court in the matter of *UoI & Ors Vs. Tarsem Singh 2009(1)AISLJ 371* and in *Ex Sep Chain Singh Vs. Union of India & Ors (Civil Appeal No. 30073/2017)*, the MA 1303/2020 is allowed despite opposition on behalf of the respondents and the delay of **8270** days in filing the OA 1140/2020 is thus condoned. The MA is disposed of accordingly.

OA 1140 / 2020

The applicant 'No. 4061114-A Ex HAV/CLK Mahesh Prasad'

vide the present OA makes the following prayers:-

"(a) Quash and set aside the impugned letter dated 14 Mar 1998, 04 Dec 2019 and 18 Jan 2020.

(b) Direct Respondents to grant disability Pension @ 50% after rounding off from 20% for life with effect from 01 Oct 1997 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 fact and circumstances of the case."

2. The applicant was enrolled in the Indian Army on 11.02.1980. After completion of Military Training, he was posted to 13th Battalion The Garhwal Rifles on 09.01.1981 and thereafter served with various units/establishments till the time of his discharge from the Army. The applicant was in Low Medical Category CEE (T) with effect from 09.03.1996 due to diagnosis 'Generalised Tonic Clonic Seizure- 345' which was further upgraded to BEE 9 Permanent) with effect from 09.03.1997 during next medical re-categorization board.

3. Thus, the discharge order of the applicant was issued by Records The Garhwal Rifles vide letter No 2048/75/RA (Mp) dated 30.04.1997 under Rule 13 (3) III (v) of Army Rule 1954 due to non-availability of suitable shelter employment in his permanent low medical category.

4. As the applicant was to be discharged from service with effect from 30.09.1997, he was brought before the constituted Release Medical Board on 23.06.1997 at the Military Hospital Dehradun, which assessed his degree of



disablement as 20% for two years and declared it to be neither attributable to nor aggravated by military service. The applicant was discharged from service with effect from 30.09.1997 under Rule 13 (3) III (v) of Army Rule-1954 and was granted Service Pension for life by the Principal Controller of Defence Accounts (Pension) Allahabad vide Pension Payment Order No S/032932/1997 dated 14.07.1997 and the Disability Pension claim was forwarded to the Chief Controller of Defence Accounts (Pension), Allahabad for adjudication, being the competent pension sanctioning authority vide Records The Garhwal Rifles letter 4061114/01/DP dated 31.10.1997.

5. The Pensioning Sanctioning authority examined the case of the applicant and rejected the same vide letter no G3/68/188/11-97 dated 02.03.1998, stating that "the disability that the applicant was suffering from i.e. 'Generalised Tonic Clonic Seizure-345 was constitutional in nature and not related to military service. The applicant was apprised of the same vide letter dated 14.03.1998, No. 4061114/08/DP and was advised that he may file an appeal within six months i.e. on or before 01.09.1998, if he so desired.

6. No such first appeal was filed by the applicant within the said period of six months and the first appeal was filed by the applicant on 26.11.2019 which was not considered due to lapse of 22 years from the date of rejection of the disability pension claim to which a response was sent vide letter dated 18.01.2020 by the respondents informing him of the letter dated 14.03.1998 as well as 04.12.2019 referred to hereinabove. In the interest of justice, in terms of



Section 21 (1) of the AFT Act 2007, we consider it appropriate to take up the OA for consideration.

CONTENTIONS OF THE PARTIES

7. The applicant submits that he joined the Indian Army in a fit medical condition after thorough medical examination with no note or any disability recorded on the records of the respondents and that he held various appointments and was exposed to various climatic conditions in extreme hot / cold climate areas and served the nation for more than 17 years. The applicant submits that his disability of 'Generalised Tonic Clonic Seizure' with its onset in October 1995, which was assessed by the RMB with the percentage of disablement of 20% for two years ought to have been assessed as a disability of a permanent nature for life.

8. The applicant has further submitted to the effect that his postings inclusive of high altitude and field stations and participation in OP "Rakshak" and OP "Hifazat" inclusive of service in a field area at Manipur have all resulted into his disability of 'Generalised Tonic Clonic Seizure' and that the said disability has wrongly been opined by the RMB to be neither attributable to nor aggravated by military service.

9. The applicant has further placed reliance on the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union of India and others*, 2013 STPL(Web) 498 SC (Civil Appeal No. 4949 of 2013 (Arising out of SLP(C)

No. 6940 of 2010, decided on 02.07.2013) with specific reliance on the observations in Para 28 thereof which read to the effect:-

"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. Inter alia the reliance is placed on behalf of the applicant on the order of this Tribunal in *Nakhat Bharti Vs. Union of India and others*, TA 48/2009 in WP (C) no. 6324/2007 and on the verdict of the Hon'ble Supreme Court in *Union of India and others vs Rajbir Singh*, Civil Appeal 2904/2011 dated 13.02.2015 wherein to contend that the applicant having been discharged from service on account of a Medical disability, the disability must be presumed to have been arisen in the course which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service.
11. Inter alia the applicant prayed that the disability element of pension be rounded off to 50% for life in terms of the verdict of the Hon'ble Supreme Court in *Union of India and others vs Ram Avtar* Civil Appeal 418/2012 dated 10.12.2014.
12. On the other hand, the respondents have placed reliance on the verdict of the Hon'ble Supreme Court in *Damodaran A.V. (D) vs Union of India & Ors* in Civil Appeal 5678/2009 (arising out of SLP (Civil) 23727 / 2008 to contend to the effect that the Medical Board is an expert body and its opinion is entitled to be given to weight, value and credence and that as the Medical Board had clearly opined the disability of the applicant to be neither attributable to nor aggravated by military service, the applicant is not entitled to the grant of the disability pension.

ANALYSIS

13. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down in the Hon'ble Supreme Court in *Dharamvir Singh* (supra), a personnel of the Armed forces has to be presumed to have been inducted into military service in a fit condition, if there is no note or record at the time of entrance in relation to any disability in the event of his subsequently being discharged from service on medical grounds the disability has to be presumed to be due to service unless the contrary is established, - is no more *res integra*.

14. The posting profile of the applicant is reflected in the RMB dated 25.06.1997 is as under:-

| From | To | Country | Field | Peace |
|-----------|-----------|---------|-------------------------|-------------|
| 11 FEB 80 | 08 JAN 81 | India | - | Lansdowne |
| 18 JAN 81 | 19 NOV 81 | -do- | FSCA (J&K) | - |
| 20 NOV 81 | 15 JAN 84 | -do- | - | Lansdowne |
| 16 JAN 84 | 18 SEP 84 | -do- | - | Aurangabad |
| 17 OCT 84 | 06 JAN 87 | -do- | - | Lansdowne |
| 11 JAN 87 | 21 JUL 87 | -do- | - | Pithoragarh |
| 01 AUG 87 | 10 MAR 88 | -do- | HAUCA (J&K-1) LADAKH | - |
| 02 MAY 88 | 18 OCT 88 | -do- | OP 'MEGHDOOT' | - |
| 18 MAR 89 | 17 JUL 89 | -do- | HAUCA (J&K-1) LADAKH | - |
| 04 AUG 90 | 14 SEP 91 | -do- | - | Meerut |
| 16 SEP 91 | 16 NOV 91 | -do- | OP 'RAKSHAK' | - |
| 24 NOV 91 | 18 MAR 95 | -do- | - | Lansdowne |
| 29 MAY 95 | 21 DEC 95 | -do- | FSCA 'OP HIFAZAT' | - |
| 28 DEC 95 | Till date | -do- | - | Dehradun |

The said posting profile indicates that the applicant was posted at FSCA (J&K), HAUCA (J&K-1) LADAKH, OP 'MEGHDOOT', HAUCA (J&K-1)

LADAKH, OP 'RAKSHAK' and FSCA 'OP HIFAZAT' during his tenure from 11.02.1980 onwards i.e. apparently for at least for more than five years, the applicant was deployed in difficult terrains. The onset of the disability of 'Generalised Tonic Clonic Seizure' is indicated to have had its origin on 25.10.1995, whilst the applicant was posted at Manipur 14 GARF RIF in his 13th posting after 15 years of service, as reflected in Part II of the RMB as under:-

| <i>Disabilities</i> | <i>Date of origin</i> | <i>Place & Unit where servicing at the time</i> |
|------------------------------------|-----------------------|---|
| 'Generalised Tonic Clonic Seizure' | 25 OCT 95 | MANIPUR 14 GARH RIF. C/O 99 APO |

5

94

- PART III

OPINION OF THE MEDICAL BOARD

(Not to be communicated to be individual)

1. Did the disability/ies exist before entering the service? ☒ No ☐ Yes

(a) In respect of each disability the Medical Board on the evidence before it will express its views as to whether:

- (i) It is attributable to service during peace or under field service conditions, or
- (ii) It has been aggravated thereby and remains so or
- (iii) It is not connected with service.

The board should state fully the reasons in regard to each disability on which its opinion is based.

| Disability | A | B | C |
|-------------------|----|----|-----|
| GENERALISED TONIC | NO | NO | YES |
| CLONIC SEIZURE | | | |
| (245) 1-67 | | | |

(b) In respect of each disability shown as attributable under A, the board should be statfully the specific condition and period in service which caused the disability.

(c) In respect of each disability shown as aggravated under B, the board should be satisfied

- (i) The specific condition and period in service which aggravated the disability.
- (ii) Weather effects of such aggravation still persist.
- (iii) If the answer to (ii) is in the affirmative, weather effects of which will persist for a material period.

(d) In the case of disability under C, the board should state exactly in their opinion is the cause thereof. *1 Consideration*

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एथान लीगल सेल
Legal Cell
जो न-ने अधिवेश अधिका

specific reasons for so opining it to be constitutional.

16. The applicant in the instant case was discharged from service on 30.09.1997 and the relevant rules applicable to him are the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel 1982 and thus in terms of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India and others*** (supra) the disability in question in relation to which there was no note recorded on the records of the respondents to indicate that the applicant

suffered from any such disability or that it could not be detected prior to induction of the applicant into military service coupled with the factum that there is no contributory factor put forth from the side of the applicant as per the RMB by the respondents, the aspect of long postings in difficult terrains as reflected hereinabove during the applicant's service in the Indian Army have to be held to be aggravating factors for the onset of the disability.

17. Significantly, the Armed Force personnel **Sharanjit Singh** a party to CA of 2015 @ SLP (C) No. 32190 / 2010 in *Union of India and others vs Rajbir Singh* (supra) who was found to be suffering from 'Generalised Tonic Clonic Seizure 345 V64' was held entitled to the grant of the disability element of pension.

18. That the applicant had been posted on field postings at FSCA (J&K), HAUCA (J&K-1) LADAKH, OP 'MEGHDOOT', HAUCA (J&K-1) LADAKH, OP 'RAKSHAK' and FSCA 'OP HIFAZAT' is not refuted by the respondents.

19. It is the contention of the learned counsel for the applicant placing reliance on the GMO (Military Pensions) 2002 vide Para 10 in Chapter IV thereof which reads to the effect:-

"Post Discharge Claims

10. Cases in which a disease did not actually lead to the member's discharge from service but arose within 10 years thereafter, may be recognised as attributable to service if it can be established medically that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtained prior to discharge and that if

the disability had been manifest at the time of discharge the individual would have been invalided out of service on this account."

to submit to the effect that even in cases where the member of the Armed Forces has retired or has been discharged from service any disability which was not present at the time of the member's retirement/ discharge from service but arose within 10 years thereafter, may be considered as attributable to service if it can be established by the competent medical authority that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge.

20. It has thus been submitted on behalf of the applicant that the spirit and principle incorporated in Para 10 in Chapter IV of the GMO (Military Pensions) 2002 ought to equally apply to cases of the Armed Forces Personnel in service, to assess the aspect of attributability to service and aggravation by service of the disease from which the said personnel is afflicted during service, if it arises within a period of 10 years after discharge/ retirement and if it, can be established by the competent Medical Authority that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge. It is thus submitted on behalf of the applicant in as much as prior to the onset of the disability of the applicant in the instant case on 25.10.1995 and even thereafter during the period 29.05.1995-21.12.1995, i.e. about a period of 4 months prior to the onset of the disability in question, and even thereafter the applicant was posted in a field area between 29.05.1995-



21.12.1995 at FSCA 'OP HIFAZAT' which is a hostile environment, thus in terms of Para-54 (3) of Chapter VI of the GMO (Military Pension), 2002, attributability,- consequentially of the disability due to military service by service in a counter insurgency/operational area with worsening of the disease thereafter has to be conceded.

21. We find force in the submissions of the learned counsel for the applicant as there appears no reason to place personnel of the Armed Forces who have retired/discharged and those in service at a different footing for analyzing the aspect of the arising of the disease and disability within a period of 10 years as per applicable rules at the given time as a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge to thus recognize the disability being attributable to service.

22. In these circumstances, even in terms of Para 14 (a) in Chapter IV of the GMO (Military Pension), 2002, which is to the effect:-

"Diseases

14. In respect of diseases, the following rules will be observed:

(a) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:

- (i) That the disease has arisen during the period of military service; and***
- (ii) That the disease has been caused by the conditions of employment in military service."***

the presumption of the entitlement in favour of the claimant, the applicant herein, having not been rebutted and there being nothing at all known about the

cause of the disease, attributability has to be conceded in the instant case. Furthermore, Para 21 in Chapter IV of the GMO (Military Pensions) 2002 is to the effect:-

"21. Aggravation : If it is established that the disability was not caused by service, attributability shall not be conceded. However aggravation by service is to be accepted unless any worsening in his condition was not due to his service or worsening did not persist on the date of discharge/claim."

23. As observed hereinabove, in terms of Para 10 in Chapter IV of the GMO (Military Pensions) 2002 the aggravation of the disability in the instant case has to be held to have been caused due to the applicant having been posted in a field area for a period of 29.05.1995-21.12.1995 i.e. prior to the onset of the disability in question in 25.10.1995 and even thereafter. The Pension Regulations for the Army (Part-I), vide Para-86 thereof is also virtually to similar effect and states the period therein, within which the disease is to be in existence is a period of 10 years from the date of retirement, which is in consonance with para 10 of Chapter-IV of the GMO(MP),2002, we are fortified in view of our order in OA 1204/2019 titled as *Ex-HAV (ACP-1) Satnarain Singh vs UOI & Ors* dated 30.05.2023, which is in similar circumstances.

CONCLUSION

24. In the circumstances, the **OA 1140 / 2020** is allowed and the applicant is held entitled to the grant of the disability element of pension qua the disability of the applicant i.e. **Generalised Tonic Clonic Seizure** assessed at 20% for life which is directed to be broad banded to 50% for life in terms of the verdict of the

Hon'ble Supreme Court in *Union of India vs Ram Avtar* decided on 10.12.2014 in Civil Appeal no. 418 of 2012 with effect from the date of his discharge but in terms of the verdict of the Hon'ble Supreme Court in *Union of India vs Tarsem Singh 2009(1) AISLJ 371* decided on 13.08.2008 in Civil Appeal no. 5151-5152 of 2008, the arrears are confined to be paid for a period from three years prior to the institution of the OA and the respondents are directed to issue the corrigendum PPO with directions to the respondents to pay the arrears within a period of three months from the date of receipt of a copy of this order, *failing which*, the respondents would be liable to pay interest @6% p.a. on the arrears due from the date of this order.

27. No order as to costs.

Pronounced in the ~~Open~~ Court on the 3 day of January, 2024.

[REAR ADMIRAL DEEPA VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/AP/