

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

OA 1144/2019

Col Mukesh Kumar Khattar (Retd) ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN CP MOHANTY, MEMBER (A)

ORDER

The applicant vide the present OA 1144/2019 has made the following prayers:-

- “(a) Quash and set aside the impugned letter No MR-05852Y/MKK/MNPRS(O)/613/2013/AG/PS-4(IMP-II) dated 05.01.2015. And/or*
- (b) Direct respondents to treat the disability of the applicant as attributable to/aggravated by military service and grant him disability element of pension with the benefits of rounding off/broad banding to 50%. And/or*
- (c) Direct respondents to pay the due arrears of disability pension from the date of his discharge with interest @12% p.a with all the consequential benefits”*

2. The applicant Col Mukesh Kumar Kahttar was commissioned in the Army Medical Corps on 27.05.1981 and retired from service on superannuation on 28.02.2014 from MH Jodhpur and at the time of his retirement he was placed

in Low Medical category S2H1A1P1E1 as per AFMSF-16 dated 14.09.2013 in view of the disability BIPOLAR AFFECTIVE DISORDER. The RMB proceedings dated 14.09.2013, assessed the disability of the applicant of BIPOLAR AFFECTIVE DISORDER with percentage of disablement of 40% for life and also opined the said disability which had its onset on November 1988 at 184 MH in peace to be aggravated by military service, though it also opined the said disability was not attributable to or aggravated by military service.

3. It was thus opined by the said RMB that after being diagnosed with specific restrictions of employability the applicant served in the environment which worsened his disease due to the stress and strain of service involved in CI Ops Area. The administrative authorities however, held that the said disability of the applicant was *neither attributable to nor aggravated* by military service and the initial claim for disability claim of the applicant was rejected vide letter No. MR-05852Y/ MKK/MPRS(O)/613/2013/AG/PS-4(IMP-II) dated 05.01.2015. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

4. Placing reliance on the observations of the Hon'ble Supreme Court in Para-28 of *Dharamvir Singh Vs UOI & India & Ors.* in CA No. 4949/2013, Learned counsel for the applicant has submitted to the effect that the applicant was commissioned in the Indian Army after a thorough medical examination and that there was no note of any disability recorded qua the applicant on the medical records of the respondents. The applicant has also undergone regular medical examinations and there was nothing to indicate the existence of the disability till he suffered with Bipolar Affective Disorder since November 1998 on which disability of the applicant was a result of the prolonged stress and strain faced by the applicant.

5. The learned counsel of the applicant has also submitted that during his entire career of 33 years in the Indian Army, and after being diagnosed with specific restrictions of employability the applicant served in such a service environment which worsened his disease because of stress and strain of service involved in CI Ops area.

6. Inter alia, the respondents have placed reliance on the Rule 27(c) of ER-82 which reads as follows :-

"27(c) Assessment of disablement and acceptance of attributability/aggravation in cases of disabilities other than

injuries are medical issues, views on such medical issues shall be given by the competent Medical Authorities as defined in rule 17(a)(i)."

As enumerated in amended Rule 17(a) (i) of ER 82, which reads as follows :-

"Rule 17(a) (i). Competent Medical Authorities in respect of for initial claim of commissioned officers is "Medical Advisor (Pension) Joint Director, AFMS (Pension) in the office of DG, AFMS."

7. We have heard the learned counsel for the applicant as well as the learned counsel for the respondents and perused the documents available on record along with the relevant Regulations.

8. It is undisputed that the applicant was commissioned on 27.05.1981 having been adjudged to be fully fit and there is also no dispute with regard to the fact that the downgrading of the medical category to S2H1A1P1E1 was in view of the invaliding disease and that the applicant superannuated from service in low medical category. Prior thereto, the Release Medical Board assessed the disability of the applicant @40% for life being aggravated by service.

9. We are of the view that the administrative decision taken by the respondents to deny disability element of pension to the applicant is against the decisions of the Hon'ble Supreme Court in ***Ex Sapper Mohinder Singh v. Union of India and another (C.A No.***

164 of 1993 decided on 14.01.1993) and *Dharamvir Singh v. Union of India and others (2013) 7 SCC 316*. The IHQ (Army) has also issued a letter dated 25.04.2011, the relevant portion of which is reproduced below:

"2 These alterations in the findings of IMB/RMB by MAP (PCDA(P)) without having physically examined the individual, do not stand to the scrutiny of law and in numerous judgments, Hon'ble Supreme Court has ruled that the medical Board which has physically examined should be given due weightage, value and credence.

.....

4. All Command HQs are requested to instruct all Record Offices under their command to withdraw unconditionally from such cases, notwithstanding the stage they may have reached and such file be processed for sanction."

10. In a catena of judgments (*pointedly, O.A No. 270 of 2016 of Armed Forces Tribunal, Regional Bench, Chandigarh*), this Tribunal has reaffirmed with consistency that due credibility and primacy has to be given to medical board proceedings. Whether it be the PCDA or an administrative authority, refutation of a medical opinion can only be by another more competent medical opinion. We do not find any justifiable reason on the part of the respondents in denying the disability element of pension to the applicant, especially when the Release Medical Board had determined the invaliding disease and assessed his disability @ 40%.

11. Further, in view of the judgment of the Hon'ble Supreme Court in *Union of India and others v. Ram Avtar in C.A No. 418 of*

2012 dated 10.12.2014, the applicant is entitled to get the disability element of pension broad banded to 50%, based on the Government notification dated 31.01.2001.

12. In the result, the O.A is allowed directing the respondents to grant disability element of pension to the applicant @ 40% and broadband the same to 50% from the date of his retirement i.e. 28.02.2014. However, the arrears will be restricted to three years from the date of filing of this OA [19.07.2019] in view of the law laid down in the case of ***Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649]***.

13. The respondents shall comply with this order within four months from the date of receipt of a copy of this order, failing which they shall pay interest @ 8% per annum on the entire arrears till the date of actual payment.

14. No order as to costs.

15. Pending miscellaneous application(s), if any, are disposed of.

Pronounced in the open Court on 18 day of March, 2024.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[LT GEN C.P. MOHANTY
MEMBER (A)]**

Akc