

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

OA No. 1289 of 2019

Sgt Manoj Kumar Singh (Retd.) **Applicant**

Versus

Union of India & Ors. **Respondents**

For Applicant : Mr. Manoj Kumar Gupta, Advocate

For Respondents : Ms. Harish Vaidyanathan Shankar
Central Government Panel Counsel

CORAM:

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

ORDER

1. Invoking the jurisdiction of this 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 are read as under: -

"(a) Quash and set aside the RMB proceedings approved on 09.03.2018, to the extent this order denies the grant of Disability Pension to the applicant;

(b) To direct the respondents to grant the grant the disability pension @ 30% broad-banded to 50% along with arrears & interest @ 10% p/a/ wef

date of discharge, by treating disease as attributable to and aggravated by military service.

(c) To pass such further order or orders, direction/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."

BRIEF FACTS

2. The applicant was enrolled in the Indian Air Force on 07.12.1998 and discharged on 31.12.2018 in Low Medical Category (LMC) A4G4. The applicant had rendered a total of 19 Years 11 months and 24 days of service.

3. The RMB at the time of release vide AFMSF-16, dated 09.05.2018 has assessed the disability **ID Close Globe Injury (Rt) Eye @ 35%** and recommended the disability as neither attributable to nor aggravated (NANA) by the AF service as the onset of the disability was prior to enrolment. The RMB found the applicant fit to be released from service in LMC A4G4 (Permanent) for **ID Close Globe Injury (Rt) Eye.**

4. The applicant had filed an appeal on 05.02.2019 against the order dated 22.01.2019 rejecting the claim of the applicant for grant of disability element of pension. The respondents vide its letter dated 18.12.2020 rejected the first appeal of the applicant and stated that the applicant is entitled to make a second & final appeal to the second appellate committee within 06 months from the date of issue of this letter. The applicant thereafter did not file any second appeal.

5. Aggrieved by this, the applicant has filed the instant OA. In the interest of justice, in accordance with Section 21(1) of the AFT Act, we take up the present OA.

CONTENTIONS OF THE PARTIES

6. The learned counsel for the applicant submitted that the applicant suffered with an eye injury prior to the enrolment in the Indian Air Force and was declared fit on 05.12.1998.

7. The learned counsel for the applicant also submitted that after being declared fit the applicant was enrolled in the India Air Force and later encountered with the disability for the first time in the year 2007-08 during his Annual Medical Examination. The learned counsel for the applicant further submitted that the medical condition of the applicant got aggravated due to stress and strain of the service which involved field postings in high altitude areas and driving in hilly terrain during odd hours at the night.

8. The learned counsel for the applicant in support of his claim has placed reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]*, which has been considered and taken note of by the Hon'ble Apex Court in many judgments, wherein the Hon'ble Supreme 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.*

9. The learned counsel for the applicant also placed reliance on the judgment of the Hon'ble Supreme Court in *UOI v. Rajbir Singh (Civil Appeal No. 2904/2011)* whereby it was held that the disability must be presumed to have been arisen in the course of service 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. The learned counsel submitted that there is admittedly neither any note in the service records of respondents at the time of the applicant's entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the applicant was found to be

suffering from could not have been detected at the time of his entry into service., and *UOI and Other v. Ram Avatar (C.A. No. 418/2012 dated 10 December 2014)*, whereby the benefit of rounding off of the disability pension was granted.

10. The learned counsel for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in *D.S. Nakara v. Union of India [AIR 1983 SC 130]* wherein it was held that *the right to pension is a fundamental right which has to override any other provisions that are inconsistent or imposing unreasonable restrictions upon it*. The learned counsel for the applicant also placed reliance on the judgment of a Division Bench of the Punjab and Haryana High Court in the case of *Ex Naik Umed Singh vs. Union of India (C.W.P. No. 7277/2013 decided on 14.05.2014)* wherein the High Court of Punjab and Haryana has upheld the verdict of the Dharamvir Singh Case (supra).

11. *Per contra*, the learned counsel for the respondents submitted that the RMB vide AFMSF-16 dated 09.05.2018 under column 5 of Para V states that the onset of the disability of the applicant was prior to his enrolment and a note to that effect had been taken as 'eye with vision' in AFMSF-2A dated 11.09.2017 and re-medical report dated 05.12.1998.

12. The learned counsel for the respondents further submitted that the applicant had the history of injury on the eye prior to enrolment and the onset

was in the year 1998 and that initially the percentage of the disablement of the applicant was assessed at @ 40% and since the applicant had refused to undergo the surgery, the percentage of the disablement was reduced to 35% and recommended as NANA in view of the history of the injury to the eye.

13. The learned counsel for the respondents placed reliance on Rule 135 of Pension Regulation for the IAF 1961 (Part-1) which states the primary condition for the grant of disability pension i.e., the disability pension may be granted to an individual who is invalided from the service on account of disability which is attributable to or aggravated by the Air Force Service and is assessed at @ 20% or over. The learned counsel for the respondent submitted that since the disability of the applicant has been assessed by the RMB as NANA to the military service, the applicant should not be granted the benefit of the disability pension as it does not satisfy one of the twin conditions as enumerated under Rule 135 of the Pension Regulation for the IAF 1961 (Part-1).

ANALYSIS

14. We have heard the learned counsel for the parties at length and have gone through the records produced before us and prima facie it is not disputed that the applicant had suffered an eye injury.

Now the only question that arises in the available backdrop is that whether the disability of the applicant is attributable to or aggravated by the military service in the instant case?

15. The issue of grant of disability pension due to injury sustained has been considered in detail in the case of *Secretary, Government of India & Ors. v. Dharambir Singh*, Civil appeal No.4981/2012 decided by the Hon'ble Supreme Court of India on 20.09.2019 and in Para 36 of the said judgment, the final conclusion have been culled out in the following manner: -

"36. We find that summing up of the following guiding factors by the Tribunal in Jagtar Singh v. Union of India & Ors. and approved in Sukhvant Singh and in Vijay Kumar do not warrant any change or modification and the claim of disability pension is required to be dealt with accordingly: -

"(a) The mere fact of a person being on 'duty' or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as 'duty'.

(b) If the injury suffered by the member of the Armed Force is the result of an act alien to the sphere of military service

or in no way be connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules 1982, it would not be legislative intention or nor to our mind would be permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.

(c) The act, omission or commission which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.

(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a Member of Force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the Armed Force must have some casual connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.

(e) The hazards of Army service cannot be stretched to the extent of unlawful and entirely un-connected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex-facie in the domain of an entirely private act cannot be treated as legitimate basis for claiming the relief under these provisions. At best, the member of the force can

claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far as it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rules 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behavior.

(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service."

16. The applicant prior to the joining the military training underwent enrolment medical wherein in the Medical Interrogation Form dated 10.09.1997 vide para 4 the applicant has stated that he had never been hospitalised for any injury in his life. The enrolment review medical dated 12.11.1997 made the following entries with respect to his vision:

<u>With Glass</u>		<u>Without Glass</u>	
Left Eye	Right Eye	Left Eye	Right Eye
6/6	6/9	6/6	6/12

There was however no mention of any injury to his eyes in either enrolment medical or review medical and he was declared fit by the medical officer CASB

(SQN Leader Manoj Kumar) and the said document has been countersigned by Wg Cdr Harpal Singh, Medical Advisor, CASB, Air Force, New Delhi dated 05.12.1998.

17. From the medical documents perused, it is apparent that the applicant had sustained the injury to his right eye while playing cricket in his village and was treated for the same in Civil Hospital, Allahabad. It is therefore apparent that the said injury was sustained by the applicant whilst he was not undergoing any military training or military duty. The said injury therefore has no causal connection with military duty. The said injury therefore cannot be attributable to military service.

18. Qua the aspect of aggravation of the disability of the applicant, there has been nothing substantial placed on the record by the counsel for the applicant that suggests exceptional stress and strain during the service of the applicant that would aggravate the pre-existing injury of the eye of the applicant and hence the said disability cannot be accepted to be aggravated by the military service.

19. Since the disability of the applicant is neither attributable to nor aggravated by the Air Force Service, one of the twin conditions, i.e., attributable to or aggravated by the military service as specified under Regulation 135 of the Pension Regulation for IAF, 1961 (Part-1), for the grant

of the disability element of pension has not been satisfied and the claim of the applicant for the grant of the disability element of pension stands rejected. Accordingly, the issue of broad-banding of the percentage of the disability of the applicant subsides and requires no adjudication.

CONCLUSION

20. The RMB has rightly assessed the disability of the applicant as neither attributable to nor aggravated by the Air Force service and there is no infirmity in the same. In view of the above consideration and parameters discussed herein above, the claim of the applicant for the grant of the disability element of pension for the disability of '**Closed Globe Injury (Rt) Eye**' stands dismissed.

21. Thus, the OA 1289/2019 is dismissed. There is no order as to costs.

22. MA, if any, stands disposed off.

Pronounced in the open Court on this ¹⁴ 13 day of December, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHEEN VIG]
MEMBER (A)

/PRGx/