

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1312 of 2019

In the matter of :

Ex Hon SLT MCPOLOG (SC) II Dhan Singh ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Ved Prakash, Advocate

For Respondents : Shri Neeraj, Sr. CGSC

CORAM :

HON'BLE Ms JUSTICE ANU MALHOTRA, MEMBER (J)
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 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

(a) Quash the Impugned Letter No. PEN/600/D/LRDO I:10/2018/1508794R dated 16.10.2018.

(b) Direct the respondents to grant disability element of pension to the applicant duly

rounded off to 50% w.e.f. his date of discharge.

- (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 along with cost of the application in favour of the applicant and against the respondents.*

BRIEF FACTS

2. The applicant, having been found medically and physically fit, was enrolled in the Indian Navy on 09.05.1984 and was discharged from service on 31.10.2018 being in low medical category S3A2(P). Before his discharge, the applicant was brought before the Release Medical Board (RMB) held in June, 2018, which assessed the disability of the applicant i.e.

'LBBB, DILATED CARDIOMYOPATHY S/P CARDIAC

RESYNCHRONIZATION THERAPY – P (CR T-P) ICD' @ 50% for life. However, the disability was held as 'neither attributable to nor aggravated by military service' with it having been opined in Part V of the Opinion of the Medical Board "No Causal Connection with Service vide Para 8, Chapter VI, GMO-2008 (MP)". Based on the same, the applicant was denied disability pension.

3. The initial claim of the applicant for grant of disability pension was rejected by the Naval Pension Office vide letter dated 16.10.2018. The applicant preferred his first appeal dated 06.12.2018. Aggrieved by no response from the respondent, the applicant filed the present OA on 09.08.2019 seeking disability pension. In the interest of justice, we take up the present OA for consideration in accordance with Section 21(1) of the AFT Act. (The first appeal of the applicant is indicated to have been rejected by the respondents on 08.01.2020 as per Annexure R-5 to the counter affidavit of the respondents).

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that since the applicant was found fully fit, mentally and physically at the time of joining the service and there was no note in his service documents to the effect that he was suffering from any disease at that time, his disability should be considered as attributable to military service and since the applicant was discharged in the medical category lower than that in which he was recruited, he should be granted disability pension for life. The learned counsel further submitted that the applicant had served in many peace and field (for more than 13 years) posting places during his tenure of service of more than 34 years having difficult and diverse living conditions and as the disability of the applicant had occurred while in active service, therefore there is a causal connection between the service of the applicant and the disability due to stress and strain of service. The learned counsel further stated that the RMB has erred in considering the disability as neither attributable to nor aggravated by service as the disability had occurred while

in service and as the several heart related diseases are part of the diseases listed in Appendix II to Entitlement Rules, 1982 declared as affected by stress and strain of service and that as it was not a congenital disability in terms of Para 8 of the GMO (MP) 2008 also the disability of the applicant ought to have been held to be attributable to/aggravated by the said conditions.

5. The learned counsel then submitted that while denying the disability pension, the respondents failed to appreciate the provisions contemplated under various rules including Rules 5 and 14(b) of the Entitlement Rules for Casualty Pensionary Awards, 1982 (hereinafter referred to as 'Entitlement Rules, 1982'), which provide that in case of discharge from service in low medical category, if no note is on record at the time of joining of service, the deterioration in health is to be presumed due to service conditions. The applicant further relied on various provisions of the Entitlement Rules to submit that any disease contracted during service, would be presumed to be attributable to service and worsening of the same during

service would be treated as aggravated by military service and onus to prove otherwise lies with the respondents only.

6. The applicant placed reliance on various judgments of the Hon'ble Supreme Court including ***Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]***, ***Union of India & Ors. Vs. Rajbir Singh [(2015) 12 SCC 264]***, ***Union of India & Ors. Vs. Angad Singh Titaria [(2015) 12 SCC 257]*** and ***Sukhvinder Singh Vs. Union of India [(2014 STPL (web) 468 SC]*** and submitted that the respondents' action in denying the disability pension is unjustified and unlawful, when the disability recorded by the RMB occurred during the military service and was caused due to stress and strain of service. It was further submitted on behalf of the applicant that in *Dharamvir Singh (supra)*, 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 disability 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 to be due to service conditions. The applicant further submitted that the Hon'ble 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.

7. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed for since the RMB, being an expert body, found the disability in question i.e. LBBB, Dilated Cardiomyopathy S/P Cardiac Resynchronisation Therapy-P' as "Neither Attributable to Nor Aggravated by Service" with no causal connection with service vide Para 8 of Chapter VI of the GMO (MP), 2008. It is submitted on behalf of the respondents that the first appeal

dated 19.12.2018 of the applicant was rejected by the HQ letter dated 08.01.2020 and the applicant did not wait for the response and filed the present OA in August, 2019. The learned counsel contended that in view of Regulations 101 and 105B of the Navy Pension Regulations, 1964, which provide that for grant of the disability pension when the disability should be either attributable to and/or aggravated by service and minimum assessment thereof is mandatorily required to be 20% or more, the applicant's disability being NANA does not qualify for grant of disability pension. The learned counsel, therefore, prays that the OA be dismissed.

ANALYSIS

8. We have heard the learned counsel for the parties and have also gone through the records. We find that as the disability of the applicant i.e. LBBB, Dilated Cardiomyopathy, has been assessed @ 50% for life, the only issue which needs to be considered in this case is as to whether the disability of the applicant is attributable to or aggravated by military service or not.

9. In the instant case, it is an undisputed fact that at the time of joining the Indian Navy, the applicant was found medically and physically fully fit and the disability in question has admittedly occurred during service and at the time of discharge, the applicant was in the medical category lower than that in which he was recruited.

10. As regards the disability 'LBBB, Dilated Cardiomyopathy', which is a disease related to heart muscle, it would be helpful to refer to Para 8 - 'Cardiomyopathy' of Chapter VI of the Guide to Medical Officers (Military Pensions), 2002, amendment 2008 (hereinafter referred to as 'GMO (MP) 2008') for determining the attributability/ aggravation of the disability due to service. The same reads as under :-

"8. Cardiomyopathy. Cardiomyopathies are diseases of heart muscle of unknown origin. It is a distinct entity by itself and excludes the diseases of heart such as IHD, hypertensive heart disease, congenital heart disease and all forms of specific heart muscle diseases. In hypertrophic cardiomyopathy the role of heredity is convincing. Many forms of specific heart muscle disease produce clinical picture indistinguishable from dilated cardiomyopathy e.g. connective tissue disorder,

sarcoidosis and alcoholic heart disease. In contrast amyloidosis and eosinophilic heart disease produce restrictive cardiomyopathy. Myopathies are generally idiopathic diseases. However, aggravation may be examined if the individual did not get the benefit of immediate attention and sheltered appointment. Alcohol induced cardiomyopathy is rejectable.”

From the above, it is clear that the cardiomyopathies are diseases of heart muscle of unknown origin but it is a distinct entity by itself and excludes the diseases of heart such as IHD, hypertensive heart disease, congenital heart disease and all forms of specific heart muscle diseases. Hence, the disability being a disease related to heart muscle and does not relate to IHD, hypertensive heart disease etc. And, therefore, the same cannot be said to be attributable to service. The applicant was always given duties with restrictions and he was immediately given treatment and several categorisation/Re-categorisation Medical Boards were conducted to examine the applicant and was given all required treatment and, therefore, aggravation cannot be conceded.

11. Moreover, though the specialist opinion/case history of the applicant recorded during various Categorisation/Re-categorisation Medical Boards, it came across that the applicant was a reformed smoker, as indicated by the RMB of June, 2018, meaning thereby the applicant used to smoke heavily earlier and thus he was even advised during the medical boards dated 23.05.2011 and April, 2011 to stop or quit smoking. Significantly the onset of the disability of the applicant was in April, 2011. Even if the applicant had quit smoking later and became a reformed smoker but the cumulative effect/impact on his health, particularly heart disease due to his smoking earlier cannot be overlooked. Besides, it may be seen in the case history of the applicant that the disability was indicated to be due to Dyslipidemia also which is a cholesterol related disease. We have already gone into the detail on the issue of adverse effect of smoking on the heart health of a person in the case of **Gp Capt Alok Goel Vs. Union of India & Ors. [O.A. No. 2361 of 2019]** decided on.

21.12.2023. Relevant observations made in Paras 11 and 12 of the said order are reproduced below :

“11. The medical aspects of smoking and heart disease and vascular disease is available in open domain, such as NHLBI, NIH article on <https://www.nhlbi.nih.gov/health/heart/smoking> updated on March 24, 2022, as is available on the internet, to the effect that smoking is harmful to nearly every organ in the body, including heart, blood vessels, lungs, eyes, mouth, reproductive organs, bones, bladder and digestive organs and thus smoking is a major risk factor for many diseases including heart disease; any amount of smoking, even occasional smoking, can cause damage to heart and blood vessels; smoking also increases risk for peripheral artery disease (PAD); when plaque builds up in the arteries that carry blood to the head, organs, arms, and legs and people have an increased risk for coronary heart disease, heart attack and stroke. Another medical review on the webpage of MEDICALNEWSTODAY published on January 6, 2023 and on the website at <https://www.medicalnewstoday.com/articles/can-smoking-cause-a-stroke>, also states:

“Smoking increases the risk of stroke because it causes inflammation and damage to the blood vessels and can lead to a build-up of plaque in the arteries. This makes it harder for the heart to pump blood. Smoking also impacts circulation throughout the body by constricting small arteries”.....

“Tobacco smoke contains thousands trusted sources of toxic and cancer-causing chemicals that pass from the lungs into the bloodstream when a person inhales it. These chemicals alter and damage cells and increase the risk of stroke and other cardiovascular diseases”.

12. Thus, in view of scientific articles in print media and internet indicate that people who are into heavy smoking are more likely to have heart attacks, high blood pressure, blood clots and other disorders of the cardiovascular system. Since there is medical evidence that smoking increases the risk of heart attacks including other diseases related to blood vessels and despite the same, if one decides to smoke out of his free will despite a statutory warning printed on the cigarette packet with the applicant in the instant case having also been reported to have consumed alcohol the night before the incident in question, we do not consider it appropriate to set aside the decision of the RMB in not conceding attributability or aggravation by service and declaring the diseases of the applicant as NANA.”

12. Further, many medical/scientific reviews are available on the internet on the disability in question i.e. LBBB, wherein it is indicated that the LBBB is an ECG abnormality in patients whose normal cardiac conduction is compromised. Relevant portion of the an article available at *NIH-National Library of*

Medicine (StatPearls publishing in January, 2024 at the website :
<https://www.ncbi.nlm.nih.gov/books/NBK482167/>) reads as
 under:

“Left bundle branch block (LBBB) is a common electrocardiographic (ECG) abnormality seen in patients whose normal cardiac conduction down both anterior and posterior left fascicles of the His-Purkinje system is compromised. Although LBBB is often associated with significant heart disease and is often the result of myocardial injury, strain or hypertrophy, it can also be seen in patients without any particular clinical disease. In isolation the presence of LBBB does not lend itself to any specific clinical concern, nor does it affect prognosis. However, in the proper clinical context, LBBB can of great consequence and importance, especially in patients presenting with acute chest pain, syncope and in those suffering from heart failure with reduced ejection fraction (HFrEF).....”

Thereafter, in the medical review dated 31.08.2022 on the internet page **MEDICALNEWSTODAY** available on the website: <https://www.medicalnewstoday.com/articles/left-bundle-branch-block>), the disease ‘LBBB’ has been explained and causes and risk factors have also been mentioned therein, which are reproduced as under :

“What is a left bundle branch block?”

Bundle branch blocks occur when there is blockage or disruption in the heart’s electrical impulses. They cause those impulses to travel more slowly to the heart’s ventricles.

It can happen on the left and right side pathways of the ventricles, and doctors can see this blockage on an electrocardiogram (ECG) machine.

An LBBB can indicate an underlying heart condition. It causes an abnormal heart rhythm and is common Trusted Source in those who have experienced heart damage.

A right bundle branch block can develop in people without any health conditions.

Causes and risk factors

In rare cases, people may have congenital heart block, meaning they are born with this condition.

However, in most cases, heart block may develop during adulthood if a person has any of the following:

- *Lyme disease*
- *heart attack*
- *heart surgery*
- *heart disease*
- *hypertension*
- *cardiomyopathies or weakened heart muscles*

Dilated Cardiomyopathy is one of the primary causes of LBBB. It causes the heart chambers to enlarge so they can no longer contract effectively.

A 2017 review notes that LBBB is more common in older adults. It affects less than 1% of those under 50 and nearly 6% of people who are 80 years and older."

13. From the aforesaid, it is clear that the disability of the applicant LBBB, Dilated Cardiomyopathy is a disease related to heart muscle/ECG abnormality which could escape medical examination at the time of joining of service and can be detected very late in service. There is nothing on record to show that the applicant had suffered heart attack, heart disease, hypertension etc., rather the applicant had suffered

with dilated cardiomyopathy, which is stated to be one of the primary causes for LBBB, which causes the heart chambers to enlarge so they can no longer contract effectively. In view of this, it is apparent that there is no causal connection between the said disability and the military service as there is no record to show that the service conditions of the applicant had any relationship with the performance of any military duty. Moreover, respondents have produced before us the details of Categorisation and Re-categorisation Medical Boards conducted in the years May, 2013, May, 2015, April, 2016 and April, 2018 wherein it is shown that the applicant was duly provided employment restrictions due to his medical condition. Further, we not find anything from the record which goes to show that the applicant had performed such duties which could have contributed to the attributability or aggravation of the disability in question. Therefore, we are of the considered view that the RMB has rightly assessed the disability of the applicant i.e. 'LBBB, Dilated Cardiomyopathy', as 'neither attributable to nor aggravated by service.'

CONCLUSION

14. In view of the aforesaid discussion, the disability 'LBBB, Dilated Cardiomyopathy' having no causal connection with the service, is not accepted as attributable to nor aggravated by service and thus the applicant is not entitled to disability pension for this disability.

15. With the aforesaid, having no case made out for indulgence into the matter, the OA 1312 of 2019 stands dismissed.

16. There is no order as to costs.

Pronounced in open Court on this 7th day of August, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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