

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

D..

OA 1369/2018

Ex Sgt Aabid Jamal Anwar

.....

Applicant

Versus

Union of India & Ors.

.....

Respondents

For Applicant

:

Mr. Ajai Kumar, Advocate

For Respondents

:

Mr. Prabodh Kumar, Advocate

CORAM

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

ORDER

14.05.2024

Vide our orders of even date, we have allowed the OA. Faced with the situation, learned counsel for the respondents makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007, to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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

OA 1369/2018 WITH MA 1356/2018

Ex Sgt Aabid Jamal Anwar ... Applicant
Versus ... Respondents
Union of India & Ors.

For Applicant : Mr. Ajai Kumar, Advocate
For Respondents : Mr. Prabodh Kumar, Sr. CGSC

CORAM :

HON'BLE MS. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT. GEN. C.P. MOHANTY, MEMBER (A)

ORDER

MA 1356/2018 x

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648), the delay in filing the OA is condoned.

2. MA stands disposed of.

OA 1369/2018

3. Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application seeking declaration of disability of the applicant as attributable and aggravated

by military service and further for grant of disability pension @40% rounded off to 50%.

4. The applicant had joined the Indian Air Force on 15.03.1994 and was discharged from service on 31.03.2014, with 20 years and 17 days of qualifying service. Before his discharge, the applicant was brought before a duly constituted Release Medical Board which assessed the disability - (i) RECURRENT DEPRESSIVE DISORDER (OLD) @ 40% for life as Neither Attributable to Nor Aggravated by Air Force service.

5. On behalf of the applicant, it was submitted that he was enrolled in the Indian Air Force in a fit medical category both physically and mentally and that there was no adverse medical opinion recorded at the time of induction into service.

6. The applicant further submits that he also underwent training before being deputed. The applicant submits that in terms of the verdict of the Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India & Ors. in CA No. 4949/2013, he is entitled to the benefit of grant of disability element of pension and in terms of Union of India & Ors. Vs. Ram Avatar in Civil Appeal No.418/2012, he is entitled to the benefit of rounding off his disability element of pension from 40% to 50%.

7. The applicant submits that there is nothing on the record to show that he was suffering from the disease at a time of entry into service and that it has to be presumed that he was in sound and mental condition at the time of entry into service and deterioration in his health has to be held to be attributable to stress and strain of Air Force service.

8. The respondents through their Counter Affidavit submit that in the instant case, there is no documented evidence of fever, infection, trauma or any other service related stressors, leading to the onset of the disability and that the onset of the ID was in a peace station. The respondents further submit that there are no aggravating or attributable factors brought forth in the instant case, which fulfill the criteria in terms of Para 54, Chap VI of the GMO 2002, amended 2008 and the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008. The respondents reiterated that the onset of the disease in the instant case was in a peace station.

9. The respondents further submit that as per the existing policy, personnel enrolled in the Indian Air Force have to undergo a primary medical examination at the time of enrolment which is carried out by the Recruiting Medical Officer and respective

Recruiting Centers and that internal disorders cannot be detected by the medical officer conducting recruiting medical examination at the time of enrollment in the absence of history or overt manifestation of symptoms. The respondents have thus prayed that the OA be dismissed.

10. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down by 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 of 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*.

11. It is essential to observe that the facts of the instant case are pari materia to the facts in the case of OA 2341/2019 titled *Ex L COM (TEL) Satish Kumar v. Union of India & Ors.* [Date of Decision: 12.09.2023] wherein it was observed as under:

16. Furthermore, the 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which take effect from 01.01.2008 provide vide Paras 6, 7, 10, 11 to the effect:-

“6. Causal connection:

For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.

7. Onus of proof.

Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/invalidment/release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.

10. Attributability:

(a) Injuries:

In respect of accidents or injuries, the following rules shall be observed:

(i) Injuries sustained when the individual is ‘on duty’, as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).

*(ii) In cases of self-inflicted injuries while *on duty’, attributability shall not be conceded unless it is established that service factors were responsible for such action.*

(b) Disease:

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

(a) that the disease has arisen during the period of military service, and

(b) that the disease has been caused by the conditions of employment in military service.

(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contracted prior to enrolment or during leave,

the incubation period of the disease will be taken into consideration on the basis of clinical course as determined by the competent medical authority.

(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded on the basis of the clinical picture and current scientific medical application.

(iv) When the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.

11. Aggravation:

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High. Altitudes etc.”

(emphasis supplied)

has not been obliterated.

Thus, the ratio of the verdicts in Dharamvir Singh Vs. Union Of India &Ors (Civil Appeal No. 4949/2013); (2013 7 SCC 316, Sukhvinder Singh Vs. Union Of India &Ors, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, UOI &Ors. Vs. Rajbir Singh (2015) 12 SCC 264 and UOI & Ors. Vs. Manjeet Singh dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.”

12. In view of the aforesaid analysis, we find that with nothing thus on the record to indicate that the applicant suffered from any disease prior to enrolment, it has to be held that the disability of the applicant i.e. the disease “RECURRENT DEPRESSIVE

DISORDER” in the instant case, was caused due to the stress and strain of air force service. Furthermore, since the onset of the disease was 17 years after enrolment in IAF the presumption of attributability is adequately substantiated in terms of Para 10(b) (iii) of Entitlement Rule for Casualty Pensionary Awards to Armed Forces Personnel, 2008 which read to the effect :-

“If nothing at all is known about cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded on the basis of the clinical picture and current scientific medical application”

Furthermore Para 11 of said Rule of 2008 relevant to the case under consideration is reproduced as under :-

“11. Aggravation. A disability shall be conceded aggravated by service if it's onset is hastened or the subsequent course is worsened by specific conditions of service”.

13. The OA 1369/2018 is allowed. The applicant is thus held entitled to the grant of disability pension for life qua the disability of “RECURRENT DEPRESSIVE DISORDER” @40% for life which in terms of the verdict of the Hon'ble Supreme Court in Union of India & Ors. Vs. Ram avtar in Civil Appeal No. 418/2012 is rounded off to 50% for life.

14. The respondents are directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of

arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents. However, as the applicant has approached the Tribunal after a considerable delay, in view of the law laid down in Union of India & Ors. Vs. Tarsem Singh 2009 (1) AISLJ 371, arrears of invalid pension will be restricted to commence to run from three years prior to the date of filing of OA 1369/2018.

15. No order as to costs.

Pronounced in the open Court on 14 day of May, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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