

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

O.A. No. 1461 of 2017
with
M.A. No. 1095 of 2017
and
M.A. No. 1606 of 2018

In the matter of :

Ex Nk Prem Chand

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri I.S. Singh, Advocate

For Respondents : Shri Anil Gautam, Sr. CGSC

CORAM :

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

O R D E R

M.A. No. 1606 of 2018 :

Rejoinder to the counter affidavit has been filed. There being delay of 66 days in filing the rejoinder, the applicant filed the present application seeking condonation of delay. In view of the averments made therein, delay is condoned. Rejoinder is taken on record.

MA stands disposed of accordingly.

M.A. No. 1095 of 2017 :

Vide this application, the applicant seeks condonation of delay of 3653 days in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]** and in **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, delay in filing the OA is condoned.

MA stands disposed of accordingly.

O.A. No. 1461 of 2017 :

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) Set aside the impugned order dated 05.02.2007 passed by the respondents;

(b) Direct the respondents to treat the disability with which the applicant is suffering as aggravated by military service;

(c) Direct the respondents to grant disability pension to the applicant w.e.f. 01.06.2001;

- (d) Direct the respondents to pay disability pension to the applicant at least @ of 50% w.e.f. 01.06.2001 by rounding off the applicant's disability to 50%;*
- (e) Direct the respondents to pay 10% interest on the arrears of disability pension w.e.f. 01.06.2001; and*
- (f) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.*

2. The facts of the case in brief are that the applicant, having been found medically and physically fit, was enrolled in the Indian Army on 19.11.1983 and was released from service on 31.05.2001 in low medical category A3(P). Before his release, the applicant was brought before the Release Medical Board (RMB) held on 11.01.2001 which assessed the applicant's disability 'COMPRESSION FRACTURE LV-3' @ 20% for life and held the same as 'neither attributable to nor aggravated by military service' (NANA).

3. The initial claim of the applicant for grant of disability pension was rejected by the respondents which was

communicated to the applicant vide AMC Records letter dated 31.07.2002. The applicant preferred the first appeal dated 01.12.2002 against rejection of the disability pension claim but the same was rejected by the respondents vide IHQ MoD (Army) letter No. B/40502/1089/03/AG/PS-4(d) dated 07.06.2004. In the meantime, the applicant filed an appeal dated 15.07.2004 for constituting a Review Medical Board to assess his clinical condition and the same was accepted by the respondents vide letter No. 6(454)/2004/D(Pen-A&AC) dated 06 Jun 2005. On 17.09.2004, the applicant preferred his second appeal against rejection of the first appeal ACFA rejected the appeal vide letter dated 09.08.2019. On 21.11.2005, the applicant appeared before the Appeal Medical Board (AMB) held at Base Hospital Delhi Cantt and the AMB found that the medical condition of the applicant was worse than what was mentioned in the RMB held on 11.01.2001. On request of the applicant, the respondents provided him the copy of the AMB proceedings, which did not mention about the percentage of the disability. The applicant then submitted an appeal dated 18.05.2011 seeking to know the percentage of the disability assessed by

the AMB, which was not replied to till the date of filing of the OA. Aggrieved by this, the applicant filed the present OA.

4. Learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit medically and physically and no note has been made in the service documents of the applicant regarding any disease suffered by him at that time. Learned counsel submitted that the applicant, during his annual leave, while coming down from stairs at his home in torrential rains inadvertently stamped on the banana peel and sustained back injury which led to the disability Compression Fracture LV-3; the applicant was admitted to MH Agra from 09.03.1998 to 30.03.1998 and he was placed in LMC CEE (T-24); that in the Re-categorisation Medical Board proceedings, the applicant's condition was noted to have worsened; that after one year, the applicant reported for review at MH Agra with increased back pain in the fractured region with difficulty in walking and neurological deficit in the left lower limb was noticed.

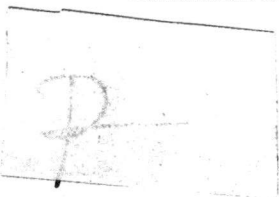
5. Learned counsel further submitted that as advised by the Surgeon, on 07.05.1999, an MRI scan of the spine of the

applicant was done, which revealed Compression Fracture LV-3 with significant loss of vertebral height and canal compromise and it established that the medical condition of the applicant got aggravated within the last year; that after having been diagnosed with the aforesaid disability, the applicant continued to perform military duties and at the time of release from service, the applicant was placed in low medical category CEE (P)/A3 (P) due to the disability.

6. Learned counsel submitted that while denying the disability pension, the respondents failed to appreciate the provisions contemplated under 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. Learned counsel further relied on various provisions of the Entitlement Rules, 1982 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.

7. Learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India and Ors.** [(2013) 7 SCC 316] and **Union of India and Ors. Vs. Rajbir Singh** (2015) 12 SCC 264, which have been followed in number of orders of the Tribunal, wherein it was held that whenever a member 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 to be due to service conditions.

8. It was further submitted on behalf of the applicant that the Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent was suffering is neither attributable to nor aggravated by military service. Referring to Rule 9 of the Entitlement Rules for Causality Pensionary Awards, 1982, learned counsel for the applicant submitted that the applicant should have been given the benefit of doubt and the disability should have been conceded aggravated by service only. Learned counsel further submitted that the Hon'ble Supreme Court, in the judgment in **Ex Gnr Laxmanram Poonia (Dead) Through LRs Vs. UOI & Ors.** [AIR 2017 SC 1179] following the judgments in *Dharamvir Singh and Rajbir Singh*, granted the disability pension. Tribunal has already granted disability pension to many similarly situated persons. Learned counsel added that the RMB committed an error in considering the disability as neither attributable to nor aggravated by military service

without giving any cogent reasons for coming to the said opinion and thus the applicant be granted disability pension.

9. *Per contra*, learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed since the RMB, being an expert body, found the disability "Neither Attributable to Nor Aggravated by Military Service" as the injury sustained at home station during his annual leave as per injury report and thus the disability was assessed @ 20% for 2 years. Learned counsel further added that the Court of Inquiry investigated the circumstances under which the applicant sustained the injury while on annual leave and it was opined by the court that as the injury was sustained due to non-service action and in peace area, it is not attributable to military service. Learned counsel further submitted that the disability does not fulfill one of the mandatory twin conditions in terms of Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I) of being assessed as 'attributable to or aggravated by military service' and assessed at 20% or more, as the case may be, and, therefore, the applicant is not entitled to disability pension. Learned counsel prayed that the OA be dismissed.

10. We have heard the learned counsel for the parties and have gone through the records produced before us.

11. It is not in dispute that when the applicant sustained the injury which led to the disability of Compression Fracture LV-3, he was on annual leave and at home. In the injury report, the applicant himself had stated that in the evening of 04.03.1998, he was coming down the stairs and due to ongoing rain on that day, the applicant slipped on the banana peel lying on the stairs.

12. However, with regard to deciding the causal connection between the injury and the military service, it would be pertinent to refer to the judgment passed by the Hon'ble Supreme Court in the case of Secretary, Govt. of India Vs. Dharambir Singh [2019 Latest Caselaw 851 SC] decided on 20.09.2019, which lays down as under :

"....(10) In view of the provisions reproduced above, we find that the following questions arise for consideration:

(i) xxx

(ii) Whether the injury or death caused even if, the armed forces personnel is on duty, has to have some causal connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?

(iii) xxx

Answer to Question No.1

(11) to (14) xxx xxx

Answer to Question No.2

(15) The 1982 Rules give expansive definition to the expression 'duty' being undertaken by the personnel of the Armed Forces. It includes the period when Armed Forces personnel is proceeding from his leave station or returning to duty from his leave station. It includes even an accident which occurs when a man is not strictly on duty provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India. However, as per Regulation 423 of the Medical Regulations, such injury has to have causal connection with military service or such injury is aggravated by military service.

(16) In Regulation 423(a) of the Medical Regulations, it has been specifically mentioned that it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service or active service area or under normal peace conditions, will be deemed to be duty. Regulation 423(a) mandates that it is essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence, both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to individual. For the sake of repetition, the said clause reads as under:

"(a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under

normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions..."

(17) Clause (b) of Regulation 423 of the Medical Regulations presumes that disability or death resulting from wound or injury, will be regarded as attributable to service if the wound or injury was sustained during actual performance of 'duty' in Armed Forces. This is in contradiction to "deemed to be duty" as per Rule 12(f) of 1982 Rules, as the Rule is when a man is not strictly on duty. However, the injuries which are self-inflicting or due to individual's own serious negligence or misconduct even in the cases of active duty, are not to be conceded unless, it is established that service factors were responsible for such action.

(18) and (19) xxx xxx

(20) In view of Regulation 423 clauses (a), (b) and (d), there has to be causal connection between the injury or death caused by the military service. The determining factor is a causal connection between the accident and the military duties. The injury or death must be connected with military service howsoever remote it may be. The injury or death must be intervention of armed service and not an accident which could be attributed to risk common to human beings. When a person is going on a scooter to purchase house hold articles, such activity, even remotely has no causal connection with the military service."

[Emphasis supplied]

13. Further, a Court of Inquiry (CoI) was also ordered to investigate the circumstances under which the applicant sustained injury while on annual leave, which assembled on

01.06.1999 and after recording statements of the applicant and the two witnesses, Sub/Nt JB Nayak and Sub/Maj RK Thapa, the Col gave its findings which read as under :

"FINDING OF THE COURT

1. ***No. 13955969-K L/Nk Prem Chand at posted at 60 Parachute Field Ambulance proceeded on AL wef 24 Feb 98 to 24 Apr 98.***
2. ***The individual sustained a back injury on 04 Mar 98 while carrying his sleeping cot down the staircase of his home.***
3. ***The individual was admitted in a Private nursing home where X-Ray was done and a fracture of L3 Vertebra confirmed.***
4. ***The individual reported to unit MI Room on 09 Mar 98 and was transferred and admitted to MH Agra the same day.***
5. ***The individual has deposited all documents verifying his injury at MH Agra.***
6. ***There are 2 witness to the incident***
No JC-214869X Sub/MT JB Nayak and
No JC-213916X Sub/Maj RK Thapa of 60 Parachute
Field Ambulance (Statements attached)."

14. On the basis of the above findings, the Court opined that:

- "1. No. 13955969-K L/Nk/Corp Prem Chand of 60 Para Fd Amb sustained injury during his AL at home station.***
- 2. As the injury is sustained due to non service action it is not attributable to military service.***

Station : C/o 56 APO

Sd/- xxx
(PK Dhage)
Lt Col
CO"

Dated : 07 Jun 99

15. Accordingly, it is well established that the disability suffered by the applicant due to the injury sustained by him during annual leave at home station is not attributable to military service as there has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/injury and military service for it to be attributable. However, as regards the issue of aggravation of the disability by the military service, we find that in the Medical Case sheet dated April, 1999, on neurological examination, sensory deficit L1 to S3 in left lower limb was found and thus in the diagnosis part, it was stated that *"In view of the detection of neurological deficit in Lt Lower limb documented before, the pt needs evaluation at a neuro surg centre for expert opinion of neuro surgeon....."*.

16. In the Appeal Medical Board proceedings held on 21.11.2005 at Base Hospital, Delhi Cantt, the Medical Case sheet indicated in the Summary of the Case and opinion of Lt Col A.K. Sharma, Classified Specialist (Surgery & Neurosurgery), Base Hospital, Delhi Cantt, it is stated :

"He is an old case of Compression Fracture LV-3 released from service on 31 May 2001 in medical category CEE (permanent) for Appeal Medical Board.



He sustained injury due to a fall from a staircase on 04 Mar 98. He was managed conservatively at MH Agra.

MRI Spine (07 May 99) revealed compression fracture LV-3 with significant loss of vertebral height and canal compromise.

Presently, he complains of occasional backache and radiation to leg with numbness of foot (L). He cannot walk for more than one kilometre.

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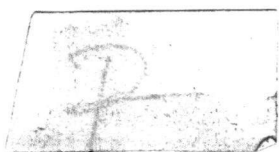
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The individual's clinical condition is worse than what is mentioned in the RMB opinion (dated 11 Jan 01)."

17. In view of the aforesaid circumstances, while the disability of the applicant is not attributable to military service, however, the aggravation of the same due to service conditions cannot be denied as the injury which led to the present disability was sustained in March, 1998 and even after that the applicant was performing normal military duties till the date of his release from service on 31.05.2001. It is pertinent to note that at the time of release, the applicant was placed in permanent low medical category due to the disability in question. Hence, the disability of the applicant is held aggravated by the military service. It is stated that the disability of the applicant was assessed by the RMB @ 20%

for 2 years. However, the opinion of Lt Col A.K. Sharma, Classified Specialist (Surgery & Neurosurgery), Base Hospital, Delhi Cantt, attached with the AMB proceedings held in 2005, after due medical examination of the applicant, it was found that the applicant's clinical condition was worse than what is mentioned in the RMB held on 11.01.2001. However, the percentage of the disability was not indicated in the AMB. Considering the facts and circumstances of the case as also the opinion of the Classified Specialist in AMB, giving the benefit of doubt, we consider the disability percentage to be at least @ 20%.

18. Furthermore, with regard to the disability of the applicant, which was considered to be of permanent nature, but assessed for a particular period i.e. for two years, it can be made out from the judgment of Hon'ble Supreme Court in the case of **Commander Rakesh Pande Vs. Union of India & Ors. [Civil Appeal No. 5970 of 2019]** decided on 28.11.2019, wherein the Hon'ble Apex Court while upholding the decision of the Armed Forces Tribunal granting disability pension for five years to the applicant, granted the disability for life and observed as under :



"Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual himself requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @ 50% for life.

[Emphasis supplied]

It is pertinent to mention here that the Tribunal has followed the aforesaid judgment of the Hon'ble Apex Court in numerous cases where the duration of disablement was for a particular period and thus was considered to be for life.

19. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension for the disability 'Compression Fracture LV-3'. Accordingly, O.A. No. 1461 of 2017 is allowed. The respondents are directed to grant the disability element of disability pension to the applicant @ 20% which is to be rounded off to 50% for life from the date of release in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India Vs. Ram Avtar** (Civil Appeal No. 418/2012), decided on 10.12.2014. However, as

the applicant approached the Tribunal after a considerable delay, the arrears be restricted to three years prior to the date of filing of the OA i.e. 21.08.2017 in view of the judgment in *Tarsem Singh's case (supra)*.

20. The respondents are thus directed to calculate, sanction and issue the necessary Corrigendum 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.

21. There is no order as to costs.

Pronounced in open Court on this 27 day of September, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P.M. HARIZ]
MEMBER (A)

/ng/