

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

**O.A. No. 1464 of 2022**

**In the matter of :**

**Ex Powtr Sharma Vishnu Banshilal** ... Applicant

**Versus**

**Union of India & Ors.** ... Respondents

**For Applicant** : Shri S.M. Dalal, Advocate

**For Respondents** : Shri S.S. Sinha, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**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, the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

- "(a) Quash impugned order dated 18 Jul 2001 passed by MoD being arbitrary and violative of statutory provisions.**
- (b) Set aside opinion of Release Medical Board dated 05 Feb 1999 regarding attributability, being contrary to statutory provisions and perverse.**
- (c) Set aside period of assessment of five years given the release Medical Board as it is in violation of MoD Notification dated 07 Feb 2001 and declare the same for life.**

- (d) *Direct the respondents to grant disability pension to the applicant w.e.f. 01 Aug 1999 and for life @50% to be broad banded to 75%.*
- (e) *Direct the respondents to pay interest @12% P.A over the arrears.*
- (f) *Pass any other or further order(s) which this Hon'ble Tribunal considers appropriate in the facts and circumstances of this case."*

### **BRIEF FACTS**

2. The applicant, having been found medically and physically fit after thorough medical examination, was enrolled in the Indian Navy on 11.07.1983 and was discharged from service on 31.07.1999 after completion of 16 years and 20 days of service. The Release Medical Board held on 05.02.1999 assessed the applicant's disability 'Thrombo Angitis Obliterans' @50% for 5 years and held the same as 'neither attributable to nor aggravated by military service' (NANA). Based on the recommendations of the RMB, the disability pension has been denied to the applicant.

3. The initial claim of the applicant for grant of the disability pension was rejected by the competent authority i.e. CDA Allahabad vide letter dated 05.06.2000 with an advice that in case, the applicant is not satisfied with the decision of the respondents, he may prefer an appeal to the Appellate Committee within

six months from the date of receipt of the above mentioned letter. The first appeal dated 29.09.2000 preferred by the applicant was rejected by the appellate authority and communicated to the applicant vide letter dated 18.07.2001 considering the disability as neither attributable to nor aggravated by military service. The applicant submitted his second appeal on 30.11.2021 through his legal representative which was not replied to till the filing of the instant OA which was so filed on 08.07.2022. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT Act, 2007.

### **CONTENTIONS OF THE PARTIES**

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit mentally and physically and no note of disability was made in his medical record at the time of entering the service and any medical disability contracted by him during the course of his service should be treated as being attributable and aggravated by the stress and strain of his service. The learned counsel for the applicant explained about the stressful and challenging conditions of service undergone by

the applicant during his service tenure. The learned counsel submitted that the applicant was posted at various stations and had served in different weather and environmental conditions in his career and discharged all assigned duties with utmost dedication in a well-disciplined and professional manner. The learned counsel for the applicant further submitted that the onset of the said disability took place after the applicant had rendered 9 years of service and it happened due to stress and strain of naval service. The learned counsel further submitted that the RMB assessed the said disability of the applicant only for five years whereas in terms of Para 7 of MoD Notification dated 07.02.2001, the same was supposed to be assessed for life, hence, the said disability should be treated as 'for life'.

5. The learned counsel for the applicant further contended that the instant matter is squarely covered by the judgment of the Hon'ble High Court of Punjab and Haryana titled **Chaman Lal Vs. Union of India & Ors.** in Civil Writ Petition 16720/2020. The learned counsel for the applicant, therefore, prayed that the disability in question may be held to be attributable to/aggravated by military service and that the disability pension may be granted to the applicant.

6. *Per contra*, the learned counsel for the respondents submitted that the sanction of disability pension in case of a disability at the time of discharge from service is based on fulfillment of essential conditions as laid down under Regulation 105-B of the Navy (Pension) Regulations, 1964 wherein for getting the disability pension, the disability should be held to be either attributable to or aggravated by the Naval service and the minimum assessment for the disabilities mandatorily is required to be 20% or more. The learned counsel for the respondents further submits that since the applicant's disability was NANA as declared by the RMB, his claim for the grant of the disability was rejected by the competent authority and thus the applicant is not entitled to the grant of the disability pension. Hence, the OA 1464/2022 deserved to be dismissed.

#### **ANALYSIS**

7. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that the applicant has suffered from the disability of 'Thrombo Angitis Obliteran' and assessed by the RMB @50% for 5 years. We are of the opinion that it is not in dispute that the extent of the disability was assessed above

20% i.e. 50% which is above the bare minimum for the grant of disability pension in terms of Regulation 105-B of Navy (Pension) Regulations, 1964. The questions that arise thus is whether the disability suffered by the applicant was attributable to or aggravated by military service and whether it should be treated for life or not.

8. The relevant part of Para 63 i.e. Para 63(a) of the Guide to Medical Officers (Military Pensions) 2002, amendment 2008, (GMO (MP) 2008), stipulates the conditions for assessing attributability of 'Thrombo Angitis Obliterans' and is reproduced as hereinunder:-

**"63. Peripheral Vascular Diseases.**

*(a) Peripheral Arterial Occlusive Disease (PAOD). Clinical features of chronic limb ischemia due to PAOD include intermittent claudication, rest pain, ischemic ulcers or gangrene. Smoking is the single most important risk factor for PAOD, others being hypertension, diabetes, hyperlipidemia, IHD and lack of exercise. Aetiology in the older age group is mainly due to atherosclerosis of the blood vessels. Diabetic micro and macro angiopathy potentiates atherosclerotic involvement. **Buerger's Disease (Thrombo Angitis Obliterans) occurs in the young male smoker, involving the small and medium sized vessels of the extremities.** Takayasu's Aortoarteritis and Giant Cell Arteritis involve the aorta and its major branches. **PAOD is not attributable. Aggravation can be considered if the disease has deteriorated on account of adverse/uncongenial service conditions in field/HAA/CIOPS or afloat services.**"*

*(emphasis supplied)*

9. In the instant case, the applicant was diagnosed with the disability of Thrombo Angitis Obliteran which is also

called 'Buerger Disease' and it comes under Arterial Occlusive Disease (PAOD). It is clearly evident from Para 63(a) of the GMO 2008 that the said disability occurs due to smoking, lack of exercise and can be caused due to other ailments like Diabetes and Primary Hypertension or IHD. As there is no evidence present on the records stating that the applicant suffered from Diabetes or Primary Hypertension or IHD, which in turn could have led to the said disability. Hence, the said disability cannot be held attributable to service conditions and was probably caused due to smoking or lack of exercise; although there is no recorded history of the applicant being a smoker. The applicant was diagnosed with the said disability after 9 years of service in 1992 and from perusal of the RMB *qua* the applicant it is observed that after the diagnosis, the applicant was never posted to any afloat service. There is, therefore, nothing on record with respect to the duties performed or postings which could contribute to the aggravation of the disability suffered by the applicant. Therefore, the disability of Thrombo Angitis Obliteran cannot also be opined as aggravated by military service. Hence, in our considered view, the said disability of

the applicant is neither attributable to nor aggravated by military service.

10. In view of the facts and circumstances of the instant matter, we do not find any infirmity in the opinion of the Release Medical Board considering the disability as neither attributable to nor aggravated by military service and the applicant thus is not entitled to the grant of the disability element of pension.

### CONCLUSION

11. In view of the aforesaid analysis and the parameters referred to above, there being no infirmity in the opinion of the RMB, we hold that the applicant is not entitled to any relief and thus the OA 1464/2022 stands dismissed.

12. There is no order as to costs.

Pronounced in the open Court on this 22 day of August, 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]  
MEMBER (J)

/nmk/