

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

OA 149/2019

Ex Sgt Vijay Kumar Choubey

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Virender Singh Kadian, Advocate

For Respondents : Mr. R.S Chillar, Advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

“(a) Quash and set aside impugned letter No. Air HQ/99798/1/724786/DAV/DP/CC dated 26.12.2018.

And/or

(b) Direct the respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant him disability element of pension, and benefit of broad banding.and/or

(c) Direct the respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date of discharge with all the consequential benefits.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact 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 was enrolled in the Indian Air Force on 16.12.1996 and was discharged from service on 31.12.2016 on completion of 20 years and 16 days of service. The Release Medical Board held on 30.12.2016 found the applicant fit to be released in the low medical category A4G4 (P) for the disability of Central Nervous System (INV)-Seizure (Old) assessed @20% for life while the net qualifying element for disability was recorded as NIL for life on account of the disability being treated as neither attributable to nor aggravated by military service.
3. The claim for the grant of disability element of pension of the applicant was adjudicated and rejected vide letter dated 05.01.2018 by the respondents. The applicant served Appeal cum Legal Notice dated 13.10.2018 and the same was rejected vide letter No. Air HQ/99798/1/724786/DAV/DP/CC dated 26.12.2018. Aggrieved by this, the applicant had filed this OA. In the interest of justice, it is considered appropriate to take up the

present OA for consideration, in terms of Section 21(2)(b) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

4. Placing reliance on the judgment of the Hon'ble Supreme Court in **Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]**, the learned counsel for the applicant submitted that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Indian Air Force at various places in different environmental and service conditions in his prolonged service and thus thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service.

5. The applicant also placed reliance on the verdicts of the Hon'ble Supreme Court in the case of **Union of India Vs. Rajbir Singh** 2015(12) SCC 264, **Dharamvir Singh Vs. Union of India & Ors**, (2013) 7 SCC 316 and **Sukhvinder Singh Vs Union of India & Ors**, (2014) STPL (Web) 468 SC, wherein similarly situated personnel was given relief. The applicant also placed a specific reliance on the order of Armed Forces Tribunal, Regional Bench, Lucknow in OA 230/2022 titled **Ex SEA I (GW) Pankaj Kumar Vs.**

Union of India & Ors., wherein similarly situated personnel was given relief.

6. Per Contra, learned counsel for the respondents submits that under the provisions of Rule 153 of the Pension Regulations for the Air Force, 1961 (Part-1), the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Air Force service and is assessed 20% or more. The learned counsel for the respondents further submits that since the applicant's disabilities were 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.

ANALYSIS

7. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the considered view that it is not in dispute that the extent of disability was assessed to be 20% which is the bare minimum for grant of disability pension in terms of Rule 153 of the Pension Regulations for the Air Force, 1961 (Part-1). The only question that arises is

whether disability suffered by the applicant was attributable to or aggravated by military service.

8. The issue of attributability of the disease is no longer *res integra* in view of the verdict of the Hon'ble Apex Court in ***Dharamvir Singh v. Union of India (supra)***, wherein it is clearly spelt out that any disease contracted during service is presumed to be attributable to military service, if there is no record of any ailment at the time of commission into the Military Service.

9. Para 33 of the Guide to Medical Officers (Military Pensions) 2002, amendment 2008, (GMO(MP) 2008), which is applicable in the instant case stipulates the conditions for assessing attributability of 'Epilepsy' and is reproduced as hereunder:

"33. Epilepsy

This is a disease which may develop at any age without obvious discoverable cause. The persons who develop epilepsy while serving in forces are commonly adolescents with or without ascertainable family history of disease. The onset of epilepsy does not exclude constitutional idiopathic type of epilepsy but possibility of organic lesion of the brain associated with cerebral trauma, infections (meningitis, cysticercus, encephalitis, TB) cerebral anoxia in relation to service in HAA, cerebral infraction and hemorrhage, and certain metabolic (diabetes) and demyelinating disease should be kept in mind.

The factors which may trigger the seizures are sleep deprivation, emotional stress, physical and mental exhaustion, infection and pyrexia and loud noise.

Acceptance is on the basis of attributability if the cause is infection, service related trauma.

Epilepsy can develop after time lag/latent period of 7 years from the exposure to offending agent (Trauma, Infection, TB). This factor should be borne in mind before rejecting epilepsy cases.

Where evidence exists that a person while on active service such as participation in battles, warlike front line operation, bombing, siege, jungle war-fare training or intensive military training with troops, service in HAA, strenuous operational duties in aid of civil power, LRP on mountains, high altitude flying, prolonged afloat service and deep sea diving, service in submarine, entitlement of attributability will be appropriate if the attack takes place within 6 months. Where the genetic factor is predominant and attack occurs after 6 months, possibility of aggravation may be considered."

10. Furthermore, Regulation 423(a) of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service' provides as under:-

"423. (a). For the purpose of determining whether the cause of a disability or death resulting from disease is or 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 Area/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. All evidences both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favor, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond

reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in case occurring in Field Service/Active Service areas.

(emphasis supplied),—

has not been obliterated.

11. 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 thereof as under:

“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 courses 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 Altitude etc.”

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 UOI &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 (supra), as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

12. In the instant case, the applicant has been posted to different places including a field area posting at 37 WG Carnicobar from 08.10.2006 to 04.10.2008 and at AFS Uttarlai a modified field area posting from 10.12.2012 to 06.12.2015 as per the letter No. Air HQ (VB) DAV (Legal Cell) dated 21.07.2023. The applicant at the time of the onset of the disability of the Central Nervous System (INV)-Seizure (old) was posted at AFS Uttarlai which is a restricted area posting (Modified Field Area) from 10.12.2012 to 06.12.2015, serving continuously for three years in the restricted area. That the applicant in all probability was exposed to sleep deprivation, emotional stress, physical and mental exhaustion while he was posted to AFS Uttarlai which are all service related trauma and are generally prevalent in restricted area posting, cannot be overlooked. Prior to this posting, in 2006 the applicant was posted to Andaman Nicobar which is also a restricted area (field area) for almost two years and likewise that the applicant may have gone through the

same conditions alike as at Uttarlai has also to be taken into account. Also in terms of Para 33 of the GMO (Mil Pen) 2008, the latency period of 7 years for developing the disability of Epilepsy and its manifestation thereafter on being subjected to service related trauma cannot be overlooked and the disability of seizure has to be conceded as being attributable to service in the instant case.

13. Regarding broad-banding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in ***Union of India v. Ram Avtar, Civil Appeal No. 418 of 2012*** and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

CONCLUSION

14. Therefore, in view of our above analysis, the OA 149/2019 is allowed and the Respondents are directed to ***grant the benefit of the disability element of***

pension @ 20% for life (for Central Nervous System (INV)- Seizure (Old)) **rounded off to 50% for life in view of judgment of the Hon'ble Apex Court in Ram Avtar (supra) from the date of discharge i.e 31.12.2016** to the applicant. ~~The arrears shall be disbursed to the applicant within three months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.~~

15. The corrigendum PPO be issued to the applicant accordingly and the arrears shall be disbursed to the applicant within three months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

16. No order as to costs.

Pronounced in the open Court on 16 day of October, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/nmk