COURT NO.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
O.A. 1493/2022

EX NK Anil Kumar ... **Applicant**
Versus
Union of India and Ors. ... **Respondents**

For Applicant : Shri Ved Prakash, Advocate
Shri Devendra Kumar, Advocate
For Respondents : Shri Sudhir Kumar, Advocate

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

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, a retired Nk of the Army, who is aggrieved by the rejection of his claim for disability pension by the respondents vide order dated 27.08.2021.

2. The applicant was commissioned in the Indian Army (IA) on 14.03.2006 and was discharged from service on 31.08.2021. Prior to his retirement, his Release Medical Board (RMB) was held on 15.04.2021. The RMB viewed the disabilities as under:

Disability	Percentage of disability with duration	Composite assessment of disabilities	Disability for qualifying for pension with duration	Net assessment qualifying for disability pension
Osteoid Osteoma Proximal Phalanx Ring Finger Rt Hand (OPTD) (S 62.6)	20% for life (twenty percent)	80% for life (eighty percent)	Nil for life (due to NANA)	Nil for life (due to NANA)
Retinitis Pigmentosa Both Eyes (H 30)	80% for life (eighty percent)		Nil for life (due to NANA)	Nil for life (due to NANA)

3. The RMB held the composite assessment of disabilities @ 80% and held that they were neither attributable to nor aggravated by military service. The claim of the applicant for disability pension was rejected by the respondents and was communicated to the applicant vide letter dated 27.08.2021. The applicant further submitted a Legal Notice-cum-Representation dated 11.09.2021 which was replied vide letter dated 19.01.2022.

Contention of the Parties

4. Learned counsel for the applicant placing reliance on the judgments of the Hon'ble Supreme Court in the case of ***Dharamvir Singh*** Vs. ***Union of India and Ors.*** [2013 (7) SCC 36] and ***Sukhvinder Singh*** Vs. ***Union of India and Ors.*** [(2014) 14 SCC 364], in which the Hon'ble Supreme Court held that the disability not recorded at the time of entry into service must be presumed to have been caused by military service.

5. Per contra, the respondents, in their counter affidavit, justified their action in denying disability element of pension to the applicant stating that since the disabilities were all held as NANA, he was not entitled for disability pension in accordance with Regulation 81 of Pension Regulations for the Army, 2008 Part–I. According to Regulation 81 of the Act, service personnel invalided out of service by the competent authority or discharged from military service on attaining the age of superannuation and has a disability either attributable to or aggravated by military service with 20% disablement is entitled for disability pension. But, in the instant case, the applicant is not entitled for disability pension since all his disabilities have been held as NANA.

Accordingly, the applicant is also not entitled to benefit of broadbanding of disability element of disability pension.

Consideration

6. Having heard the rival submissions and perused the records, including the RMB, the main issue to be decided is whether the disabilities of the applicant could be held attributable to or aggravated by military service and broad banded to 100 percent.

7. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh*** Vs. ***Union of India & Others*** reported in [(2013) 7 SCC 316]. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words-

> *"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).*

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].
29.3. The onus of proof is not on the claimant (employee). The corollary is that onus of proof that the condition for non-entitlement is with the employer A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)).

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)]

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons (Rule 14(b)), and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions). 2002. "Entitlement General Principles, including Paras 7, 8 and 9 as referred to above (para 27).

8. The 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which take effect from 01.01.2008 provide vide Paras 4,5,6,7,10,11 thereof as under:

> *4. Invalidment from Service:*
>
> *(a) Invalidation from service with disablement caused by service factors is a condition precedent for grant of disability pension. However, the disability element will also be admissible to personnel who retire or are discharged on completion of terms of engagement in low medical category on account of disability attributable to or aggravated by military service, provided the disability is accepted as not less than 20%.*
>
> *(b) An individual who is boarded out of service on medical grounds before completion of terms of engagement shall be treated as invalided from service.*
>
> *(c) PBOR and equivalent ranks in other services who are placed permanently in a medical category other than SHAPE 1 or equivalent and are discharged because (i) no alternative employment suitable to their low medical category can be provided, or, (i) they are unwilling to accept alternative employment, or, (ii) they having been retained in alternative employment are discharged before the completion of their engagement, shall be deemed to have been invalided out of service.*
>
> *5. Medical Test at entry stage:*
>
> *The medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore,it may not detect some dormant disease. Besides, certain hereditary constitutional and congenital diseases may manifest later in life, irrespective of service conditions. The mere fact that a disease has manifested during military*

service does not per se establish attributability to or aggravation by military service.

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.
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 white '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 contacted 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."

9. Regarding the ID 1 of Osteoid Osteoma Proximal Phalanx Ring Finger Rt Hand (OPTD) (S 62.6), the RMB assessed it at 20% for life as neither attributable nor aggravated by military service (NANA). The Medical literature on the cause of ID Osteoid Osteoma Proximal Phalanx Ring Finger Rt Hand has supported the fact that it is a benign bone tumor and has no service-related causative or

aggravating factors. The studies conducted by University of San Diago gave the observations mentioned below: (https://myhealth.ucsd.edu/Library/Encyclopedia/134,608) :

> *"Researchers are still working to understand what causes osteoid osteomas to form. They seem to start with inflammation in the bone. When that occurs, blood vessels in the area start to expand and grow. Bone-producing cells called osteoblasts soon start to multiply. They lay down the building blocks for bone. Cells that break down bone, called osteoclasts, also become part of the osteoma. The growing tumor puts pressure on the surrounding bone. This hardens and forms a shell around the tumor. Often there is no history of injury or infection at the site where the osteoid osteoma forms."*

10. It was further observed in the RMB that the individual was provided expert medical treatment and sheltered duties. Hence this disability was treated as NANA. We concur with the opinion of the board as the ID of Osteoid Osteoma Proximal Phalanx Ring Finger Rt Hand (OPTD) (S 62.6) is one which is neither attributable nor aggravated by military service.

11. Further considering ID 2 of 'Retinitis Pigmentosa Both Eyes' we find at this point it is relevant to refer to Para 24 (d) (iii) of Amendment to Chapter VI - Assessment of Guide to Medical Officers (GMO) - 2008 (Military Pensions), which is reproduced as under:

24. <u>Diseases of Retina.</u>

All retinal diseases are associated with reduction of acuity of vision, contraction of field of vision, colour blindness and sometimes progress to blindness.

Retinal diseases are divided into broad categories as under :

Xxx xxxx xxxx xxxx

(iii) <u>Retinitis Pigmentosa</u>. It is a generic name for a group of hereditary disorders characterized by progressive loss of photoreceptor retinal pigment i.e. rods and cones. Night blindness is the main complaint with loss of acuity of vision. Disability is rejectable.

12. From the aforesaid provisions, the disease suffered by the applicant falls under the Para 24 Clause (d)(iii) and the same provides that 'Retinitis Pigmentosa' is a generic name for a group of hereditary disorders characterized by progressive loss of photoreceptor retinal pigment i.e. rods and cones, night blindness being the main complaint with loss of acuity of vision and, hence, the disability is considered as rejectable on the basis of attributability.

13. This is further supported by the medical literature wherein it is observed that the 'Retinitis Pigmentosa' is a genetic disease. The relevant paras are extracted below (<u>https://www.ncbi.nlm.nih.gov/books/NBK519518/</u>):

Retinitis pigmentosa (RP) is a group of genetic eye disorders characterized by the progressive degeneration of photoreceptor cells in the retina, leading to vision loss. It typically begins with night blindness and gradually narrows the visual field, often resulting in tunnel vision. Mutations cause RP in various genes responsible for maintaining the health of photoreceptor cells, affecting their ability to respond to light. As RP advances, individuals may experience difficulty with tasks requiring peripheral vision, such as navigating in dimly lit environments or recognizing faces from a distance. Color vision can also be affected in some cases.

14. Regarding the issue of primacy of the Medical Board, the Supreme Court in its judgment in ***UoI*** Vs. ***Ravinder Kumar*** in Civil Appeal No. 1837/2009 decided on 23.05.2012, has explicitly viewed that :

> *"5. We are of the view that the opinion of the Medical Board which is an expert body must be given due weight, value and credence. Person claiming disability pension must establish that the injury suffered by him bears a causal connection with military service.*
>
> *6. In the instant case, the Medical Board has opined as under:-*
> *"ID. Generalised Tonic Seizure. MA opined that ID is genetic in origin, not connected with service.*
> *Thus in view of the above, it is evident that the ailment with which respondent has been suffering from is neither aggravated nor attributable to the Army Service".*

15. Further, the Hon'ble Supreme Court in its judgment in the case of ***Secretary, Ministry of Defence & Others*** Vs. ***Damodaran A.V. (dead) through LRs. & Others*** [(2009) 9 SCC 140], clearly laid down the following principles with regard to primacy of medical opinion:-

> *"8. When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medical category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/ invalidating medical board. The said release/invaliding medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/ recommended in view of the disease being capable of*

being improved. All the aforesaid aspects are recorded and recommended in the form of AFMSF-16. The Invalidating Medical Board forms its opinion/ recommendation on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and of course, the physical examination of the individual.

9. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the matter for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service."

16. In the light of the above considerations, we conclude that the applicant is not entitled to the disability element of pension. Accordingly, the OA stands dismissed.

17. MA if any, stands disposed.

18. Pronounced in the open Court on 27th day of September, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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