

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

O.A. No. 1559 of 2019

with

M.A. No. 2518 of 2019

In the matter of :

Ex POME S.S. Mane

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Ved Prakash and Shri Devendra
Kumar, Advocates

For Respondents : Shri Shyam Narayan, 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, who is aggrieved by the impugned order dated 09.04.2023 vide which the applicant's claim for disability pension was rejected.

2. Brief facts of the case are that the applicant was enrolled in the Indian Navy on 09.01.1987 and was discharged from service with effect from 28.02.2002 being in low medical category S3A2(P) PMT. Before his discharge, the

applicant was brought before the Release Medical Board (RMB) held on 10.10.2001 which assessed the applicant's disability i.e. INV-CNS (SEIZURE) ICD No. 780 (D)' @ 20% for two years and the same was held as 'neither attributable to nor aggravated by military service'. The applicant's claim for grant of the disability pension was rejected by the CDA (Navy) vide letter No. PEN/DIS/B/02/4809 dated 09.04.2003. It is the case of the applicant that he obtained the RMB proceedings and the aforesaid rejection letter by filing an RTI application on 22.02.2019. Against the rejection of his claim, the applicant filed the First Appeal dated 22.02.2019 for grant of the disability element of pension but no reply was received from the respondents. Hence, the present OA.

3. Learned counsel for the applicant submitted that the applicant at the time of enrolment was fully fit medically and physically and no note was made in his medical documents to the effect that he was suffering from any disease at that time. He further submitted that in the year 1998, when the disability of INV-CNS (Seizure) detected, the applicant was in active service and posted onboard ship INS Shakti i.e. field area and since then, the applicant remained under treatment

for the disability. Learned counsel submitted that the applicant had to work in the engine room being an engine room sailor and there being no fixed working hours as the applicant had to attend defect rectification any time and all this caused sleep deprivation and physical and mental exhaustion and the applicant has to live onboard ships during sailing without his family, which put emotional stress on the applicant and triggered the disability of Seizure, and as per Para 33 of Guide to Medical Officers (Military Pensions), 2002 amendment 2008, sleep deprivation emotional stress, physical and mental exhaustion etc. are factors which may trigger the seizures and thus aggravation due to service could have been considered. Learned counsel further stated that the RMB has erred in considering the disability as neither attributable to nor aggravated by service ignoring the fact that the present disability had occurred while the applicant was in active service in field area.

4. Learned counsel further 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. The 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.

5. The learned counsel placed reliance on the judgments of the Hon'ble Supreme Court including **Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]**, **Union of India & Ors. Vs. Rajbir Singh [(2015) 12 SCC 264]**, **Union of India & Ors. Vs. Angad Singh Titaria [(2015) 12 SCC 257]** and the orders passed by the Tribunal and submitted that the respondents' action in denying the disability pension is unjustified and unlawful, when the disability recorded by the RMB occurred during the military service and was caused due to stress and strain of service.

In *Dharamvir Singh (supra)*, 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 disability 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 due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service.

6. *Per contra*, learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, being an expert body, found the disability in question i.e. INV-CNS (SEIZURE) ICD as

“Neither Attributable to Nor Aggravated by Service”. Learned counsel contended that the first appeal preferred by the applicant was time barred and filed beyond the stipulated time limit. Learned counsel for the respondents further submitted that in view of Regulations 101 and 105-B of the Navy Pension Regulations, 1964, which provide that the disability pension is to be granted when the disability should be either attributable to or aggravated by service and minimum assessment thereof is mandatorily required to be 20% or more and that the applicant was discharged after expiry of the term of engagement and hence, the applicant is not entitled to any disability element of pension. Learned counsel, therefore, prayed that the OA may be dismissed.

7. We have heard the learned counsel for the parties and have gone through the records. We find that the issue which needs to be considered is as to whether the disability of the applicant i.e. ‘INV-CNS (SEIZURE)’ is attributable to or aggravated by military service or not.

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 (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 entering into the Military Service.

9. For determining the issue in question, we may refer to Para 33 of the Guide to Medical Officers (GMO) (Military Pensions) 2002, amendment 2008, 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. On perusal of the above provision, it is clear that stresses and strains of active service could be a cause of the disease that the applicant contracted, and that where there is an evidence of a person being in active service such as prolonged afloat service/field posting and if the attack takes place while serving in the areas within a period as mentioned in the above provision, entitlement of attributability will be appropriate, and, therefore, the applicant's medical condition, which was serious enough to lead to his discharge from service, can be considered as attributable to/aggravated by Naval service.

11. Applying the above parameters to the present case, we are of the view that the applicant has been discharged from service in low medical category on account of medical disease/disability, the disability must be presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by the Naval service. 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.

has not been obliterated.

12. 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."

13. In the instant case, we have gone through the posting profile of the applicant as mentioned in Annexure R-2 to the counter affidavit filed by the respondents which forms part of the RMB and we find that at the time of onset of the disease in question i.e. 10.02.1998, the applicant is found to be on afloat service in field posting with effect from 24.05.1997 to 23.02.1998 onboard INS SHAKTI. Besides this period, the applicant had four more field area postings prior to the aforesaid posting and these afloat services, where the applicant was likely to have been subjected to sleep-deprivation, emotional stress, physical and mental exhaustion and loud noise which are considered to be the triggering factors for the disability of Seizure as per Para 33 of the GMO (MP) 2008 which cannot be overlooked. Also, as per the said provisions, Epilepsy can develop after a time lag/latent period of seven years from the exposure of the offending agent and thus the likelihood of the onset of the disability of the applicant 10.02.1998 pursuant to the

applicant having been posted onboard INS SHAKTI from 24.05.1997 to 23.02.1998 cannot be ignored and, therefore, the disability of the applicant has to be held to be attributable to military service.

14. Further, with regard to the fact that the duration of disablement assessed by the RMB was for two years only, it can be made out from the verdict of the 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, taking note of the policy letter dated 07.02.2001, granted the disability for life with the following observations :

"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]

15. In the light of the afore-referred judicial pronouncements and essential parameters given above, we hold that the applicant's disability is attributable to the military service and the assessment of the same is to be considered as 20% for life and, therefore, the applicant is held entitled to the grant of disability element of pension.

16. In view of the above, O.A. No. 1559 of 2019 is allowed. The respondents are directed to grant the disability element of pension to the applicant for the disability INV-CNS (Seizure) @ 20% for life which is directed to be rounded off to 50% for life from the date of discharge 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 has approached the Tribunal after a considerable delay, in view of the law laid down in *Tarsem Singh's case (supra)*, arrears will be restricted to three years prior to the date of filing of this OA i.e. 16.09.2019.

17. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within a period of three months from the date of receipt of a copy of

this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

18. There is no order as to costs.

Pronounced in open Court on this 2nd day of August, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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