

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

84.

OA 1595/2022

Cmde VS Rawat (Retd) VSM	Applicant
Versus		
Union of India & Ors.	Respondents
For Applicant	:	Mr. Shakti Chand Jaidwal, Advocate
For Respondents	:	Mr. R.S Chillar, Advocate

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
04.01.2024

Invoking the jurisdiction of this Tribunal under Section 14 the Armed Forces Tribunal Act 2007, applicant claims grant of disability to him on account of the fact he has contacted an ailment namely "CAD DVD ACS-PCL TO LCX-OMI X DES DONE NORMAL LV FUNCTION (1 25.1) which is attributable to Military Service as recommended by the RMB and in spite of the recommendation, disability pension is not being granted to him.

2. Facts in nutshell indicate that the applicant was commissioned into the Executive Branch of the Indian Navy on 01 July 1986. At the time of joining the Navy, he was duly examined by the Medical Board and was found to be medically fit for performing his duties. Applicant was selected

for Clearance Diving Officers Course soon after completion of his first afloat appointment. He qualified as a Mine Clearance Diving Officer in 1988 after he was again thoroughly examined medically and was found to be fit for all Diving duties. It is said that applicant qualified as a Marine Commando in the year 1992 that also after clearing all the Medical Boards. The applicant, with the passage of time joined the Indian Marine Special Force (IMSF) where the job requirement is stressful in nature and tasks assigned to the applicant is of great mental and physical strain.

3. In sum and substance it is the case of the applicant that while undergoing the duties assigned to him particularly in the IMSF, the applicant had to do strenuous duties having mental and physical strain and as a result of which he sustained the aforesaid disability.

4. Learned counsel for the applicant invited our attention to the duty chart of the applicant available at page 24 of the Paper Book and by referring to the various duties assigned to the applicant for the period 2nd September 2018 up to 18th September 2018 tried to demonstrate before us that the operational activities undertaken by the applicant in the diving unit did have lot of stress and strain on him. Learned counsel refers to the note appended to the aforesaid schedule of the applicant authored by the Director General of Naval Operations, particularly Para (c) and (f) of the aforesaid note which reads as under:-

“(c) The current appointment of the Officer is considered strenuous since all aspects of Special Operations and Diving, i.e. operations, perspective planning, procurement, training, HRD issues and infrastructural development activities etc. is supervised by Cmde (Spl Ops & Diving). The officer has been experiencing breathlessness and difficulty in breathing, with palpitations and at times minor chest pain over the last one month.

“(f) The last two appointments teneted by the Officer have also been strenuous i.e., Commanding Officer of INS Gomati and Directing staff at Naval War College.”

and argued that for the aforesaid it is clear that factual evidence is available on record to show that the duties of the applicant did have physical and mental strain. Learned counsel thereafter invited our attention to Annexure A-3 (Proceedings of the Categorization Medical Board) conducted on 5th December 2018 and the recommendations and the observations made in Para 17 thereof reads as under:-

“17. Yes, there is evidence of exceptional mental and physical strain in 14 days charter of duties.”

5. He further invites our attention to the proceedings of the Release Medical Board held in the case of the applicant. The statement of the Commanding Officer contained in Page 33 of the Paper Book i.e. Para 5 of the proceedings which reads as under:-

*“5. Did the duties involve Severe/Exceptional stress and strain?
(Give details) Yes*

- (a) *Since when Continuous since being in Marcos and CD Specialization the officer has to meet the high physical fitness standards on a daily basis. Also exceptional physical and mental stress while carrying out duties of Cmde (Special Ops and Diving)*
- (b) *On special day/occasion."*

and finally the opinion of the Medical Board contained in Part VII of the RMB proceedings wherein the following detailed justification have been given for the ailment of the applicant and its attributability to Naval Service.

"Onset of ID is in peace location. The offr heads, the Dte. Of under staff Branch-II, which is an operational Br at Naval HQ. He also Heads the Indian Naval Diving Team at New Delhi, which is only Operational Diving Unit to cater to all diving requirements of North India and also there is evidence of exceptional mental and physical stress and strain in 14 days charter of duty and hence the ID is conceded as attributable to mil service is terms of para 47, chapter VI, GMO 2002, amendment 2008."

6. Learned counsel finally argues that the disability having been assessed @ 30% for life which is attributable to the service, the applicant is entitled to the disability rounded off to 50% based on the law laid down in the case of **Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012)** decided on 10.12.2014. Further, learned counsel argues

that in spite of opinions given by the Commanding Officer and the Medical Board only on the basis of the opinion of the Financial Advisor contending that the disability occurred is not attributable to Military Service, the benefit is denied to the applicant.

7. Learned counsel invites our attention to Regulation 28 of the Navy Pension Regulation 1964 which reads as under :-

"28. Disability Pension when admissible.— An officer who is retired from service on account of a disability which is attributable to or aggravated by such service and which is assessed at twenty percent or over may, on retirement, be awarded a disability pension consisting of a service element and a disability element in accordance with the regulations in this section."

to say that the applicant is entitled to disability pension. Further reliance is placed on two judgments of this Tribunal in the case of OA 1508/2017 *Cdr VD Nagar (Retd.) Vs Union of India & Ors.* decided by a Coordinate Bench of this Tribunal on 25.10.2018 and by another Coordinate Bench of this Tribunal in OA 909/2019 *Col MPC Rao Vs Union of India & Ors.* decided on 28.04.2022 in support of his contention.

8. Rebutting the aforesaid contention, learned counsel for the respondents argued that as per the provisions of the Appendix to the MoD's letter dated 18.01.2009, there has to be causal connection between the disability which has occurred in the military service and in this case as

the causal connection with the disability in the military service has not established in the opinion of the competent approving authority namely Principal IFA, the benefit has therefore been denied to the applicant. It is the case of the respondents that the first appeal and second appeal of the applicant has been considered in accordance to the requirement of the policy dated 18.01.2009 and as causal connection between the disability which has occurred and the military service is not established, the benefit has been denied to the applicant.

9. As far as the factual aspects of the issue as detailed hereinabove are not in dispute. It is an admitted position that the concerned Commanding Officer of the applicant has categorically mentioned that the duties performed by the applicant did have physical and mental strain and even the medical reports do show that the applicant had to do strenuous duty and the disability occurred because of the duties performed by the applicant and the medical opinion is very categorical in its term as it is attributing the disability to the military service rendered by the applicant. In the case of *Ex Sapper Mohinder Singh*, CA 164/1993 decided on 19.04.1993 the issue has been dealt in detail by the Hon'ble Supreme Court and following the same in the case of Cdr VD Nagar (supra) so also MPC Rao (supra), Coordinated Benches of this Tribunal have granted benefit of disability to officers holding it to be attributable to military service. It is a cardinal principal of law that when medical opinion of

experts are available and where the medical opinion is categorically indicating that the ailment or disease or the disability or the injury sustained by a man in uniform is attributable to military service, in such a situation administrative authority like a financial authority cannot disagree with the same and give a different opinion until unless the same is supported by cogent evidence justifiable in all respects i.e. on facts and law. In this case both the Commanding Officer and the medical authority have given the reason for holding the disease or ailment attributable to military service and merely by referring a circular i.e. MoD's letter dated 18.01.2009, the financial authority without giving any reason as to why he does not agree with the report of the medical authorities and the Commanding Officer and for what reasons he holds that there is no causal connection between the ailment or the disease and the military service has simply without application of mind and without passing a Speaking Order or indicating any cogent justification for an action and rejected the claim of the applicant which in our considered view, cannot be accepted when it is evaluated in the back drop of the justifications and reasons given by the Commanding Officer and the Medical Board. It is a well settled Principal of law that expert opinion supported by reasons have to be accepted until and unless they are found to be unsustainable in law or arbitrary or unreasonable in nature.

10. In this case in hand there is nothing to hold that the medical opinion given by the medical authorities in the facts and circumstances of the case are in any manner arbitrary unreasonable or not supported by medical evidence, legal principle or incorrect in facts.

11. Accordingly, finding the action of the respondents in rejecting the claim of the applicant unsustainable, we allow the application, quash the impugned order and direct that the applicant be granted disability @ 30 % rounded off to 50% for life from the date of discharge.

12. Learned counsel appearing for the respondents makes an oral prayer for grant of leave to appeal for impugning the aforesaid order before the Hon'ble Supreme Court. However, there being no point of law, much less any point of law of general public importance involved in the order, which warrants grant of leave to appeal, the oral prayer is declined.

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[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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