

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

OA 1638/2018

Ex Sgt. Devendra Singh

... Applicant

Versus

Union of India and Others

... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate

For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM:

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

ORDER

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 are read as under:

(a) To direct the Respondents to place all medical records including medical boards conducted by the Respondents.

(b) To direct the Respondents to honour the statements made by the respondent during OA 185/2015.

(c) To direct the Respondents to grant disability pension to the Applicant w.e.f. 01.04.2017.

(d) To direct the Respondents to broad banding the disability element of pension from 40% to 50%.

(e) To direct the respondent to pay 12% interest on the arrears of pension and other benefits

(f) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.

BRIEF FACTS

2. The applicant Ex Sgt. Devendra Singh was enrolled in the Indian Air Force on 11.03.1997, and discharged from service on 31.03.2017 on fulfilling the conditions of enrolment. The applicant had served a total of 20 years and 21 days of regular service.
3. The applicant underwent initial medical exam and was declared fit in medical category 'AYE' prior to his enrolment vide AFMSF 2A dated 26.04.1996.
4. The applicant suffered the disease of 'Right Renal Ectopia (Pelvic)' in the year 2007 at the age of 28 years. The applicant was then placed in LMC A4G4 (T-24) for the disability Right Renal Ectopia (Pelvic) vide AFMSF-15 dated 16.09.2009.
5. Thereafter, the applicant underwent a subsequent medical board where he was placed in LMC A4G2 (P) for the said disability vide AFMSF-15 dated 26.02.2010. The percentage of the disability was assessed at @ 30% for life and the disability was considered NANA by the Air Force service.

6. Vide AFMSF-15 dated 19.07.2016, the medical category of the applicant was subsequently upgraded to full medical category A4G1 (SHAPE-1) for the disability **Un-Ascended Right Kidney**.
7. The Release Medical Board (RMB) vide AFMSF-18, dated 13.10.2016 found the applicant fit to be released in medical category A4G1 (SHAPE-1) free from any disease/disability.
8. The applicant had earlier filed OA 185/2015 before this Tribunal for the grant of disability pension. This Tribunal vide order dated 10.03.2017 accepted the contention that the applicant would not press for the said OA with the liberty to the applicant to file an independent petition for grant of disability pension.
9. In compliance of the order dated 10.03.2017 in OA 185/2015, a belated RMB of the applicant was conducted to re-assess the disability and entitlement for the purpose of grant of disability pension. The said RMB assessed the disability of the applicant at @ 40% for five years for the disability ID **Right Renal Ectopia (Pelvic)** as NANA by the service.
10. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in accordance with Section 21(1) of the AFT Act, we take up the present OA.

CONTENTIONS OF THE PARTIES

11. The learned counsel for the applicant stated that at the time of enrolment, the applicant had been found physically and medically fit and, therefore, the disability suffered by him should be attributed and aggravated due to his service, consistent with settled law.

12. The learned counsel for the applicant stated that the applicant's disability ID '**Un-Ascended Right Kidney**' had been wrongfully assessed by the release medical board as NANA, despite the respondents' acknowledgment of this condition in previous court orders.

13. The learned counsel for the applicant stated that the Hon'ble Court had previously directed the respondents to grant disability pension based on reports affirming the applicant's disability, and the respondents had failed to comply with this directive.

14. The learned counsel for the applicant stated that the respondents had neglected to consider relevant legal precedents, including the Supreme Court rulings in *Dharamveer vs. Union of India [Civil Appeal 4949/2013 decided on 02.07.2013]* and *UOI vs. Ram Avtar [Civil Appeal 418/2012 decided on 10.12.2014]*, which established a presumption in favour of attributability of disability to military service when a member was found fit at the time of enlistment.

15. *Per Contra*, the learned counsel for the respondent stated that, in compliance of the order from this Hon'ble Tribunal dated 10.03.2017, the applicant's Release Medical Board was convened after his discharge to evaluate the attributability and aggravation of his disability, **Right Renal Ectopia (Pelvic)**. The recommendations from the Release Medical Board, approved by the Deputy PMO at HQ CAC 1 AF on 04.04.2018, indicated that the applicant's disability had existed prior to his entry into service and had not been detected during the routine medical examination conducted at that time.

16. The learned counsel for the respondent stated that according to Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), the primary conditions for granting a disability pension are as follows; "*Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force Service and is assessed at 20% or over*" and further submitted that since the applicant has not fulfilled the twin conditions of Rule 153 of the Pension Regulations of the Air Force, the grant of disability pension be rejected.

ANALYSIS

17. We have heard the learned counsel for both the parties at length and have gone through the records produced before us. We find that the

disability ID **RIGHT RENAL ECTOPIC (PELVIC)** suffered by the applicant had been belatedly assessed by the RMB in compliance of order dated 10.03.2017 in the OA 185/2015 which recommended the said disability as NANA at @ 40% for five years. The instant OA requires adjudication of the following two questions i.e.,

- a) Whether the disability of **RIGHT RENAL ECTOPIC (PELVIC)** of the applicant is attributable to or aggravated by the Air Force? And,
- b) whether the applicant is entitled for the benefit of rounding off of the disability element of the disability pension?

18. The law on the issue of attributability of a disability is already settled by the Hon'ble Supreme Court in the case of *Dharamvir Singh Vs. Union of India [(2013) 7 SCC 316]*, which has been followed in subsequent decisions of the Hon'ble Supreme Court and in a catena of orders of this Tribunal, wherein the Apex 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 disabilities 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. The guidelines laid down vide the verdict in *Dharamavir Singh (supra)* are as under:

"28. A conjoint reading of various provisions, reproduced above, makes it clear that:

- (i) Disability pension to be granted to an individual who is invalidated 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 or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix--II (Regulation 173).*
- (ii) 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 r/w Rule 14(b)].*
- (iii) 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).*
- (iv) 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)].

- (v) *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. [14(b)].*
- (vi) *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. [14(b)]; and*
- (vii) *It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement: General Principles", including paragraph 7, 8 and 9 as referred to above."*

19. The Hon'ble Supreme Court in the case of *Union of India & Ors. Vs. Rajbir Singh [Civil Appeal Nos. 2904 of 2011]* decided on 13.02.2015, after considering the case in Dharamvir Singh (supra) upheld the decision of this Tribunal granting disability pension and observed as under:

"15. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service....."

20. The 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008', which take effect from 01.01.2008 provide vide Paras 6, 10 and 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.

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. [(2013) 7 SCC 316]* and *Union of India Vs. Rajbir Singh [(2015) 12*

SCC 264], as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

21. Qua the attributability of the disability *i.e.*, **Right Renal Ectopia (Pelvic)** assessed at @ 40% for five years by the belated RMB dated 26.03.2018 (in compliance of order dated 10.03.2017 in OA 185/2015), it is essential to advert to Para 74 of the Guide to Medical Officers (Military Pensions) 2008, the relevant extract is reproduced below as follows:

"74. Congenital Diseases of Kidney. Certain congenital diseases such as polycystic disease of kidney, horse-shoe kidney, pelvic-ureteric junction obstruction (hydronephrosis), ectopic kidney, vesicico-ureteric reflux, megaureter, ureterocele, retrocaval ureter, ureteral duplication, and duplication of collecting system escape detection at the time of enrolment and many manifest later in service as asymptomatic urinary abnormality, hypertension and frequent urinary tract infection. Such kidneys may be easily injured if hydronephrotic or ectopically located. Aggravation will be considered if there is trauma related to service."

22. It is averred by the respondents that in terms of Para 2 and 3 of Part V of RMB, the medical board has stated that the applicant's disability was existing before entering into service but the same could not be detected during the routine medical examination carried out at the time of entry. Para 74 of the GMO (MP) 2008 (*supra*) explicitly mentions about the causes of the kidney disease and it says that the cause for *ectopic kidney* is congenital in nature and such kidneys may be easily injured if hydronephrotic or

ectopically located. The said disability cannot be said to be conceded as attributable to the Air Force service on the ground that disease is due to it being congenital in nature. Moreover, there is nothing on record to state that the kidney was injured ever during the service of the applicant, hence cannot be assessed as aggravated by the Air Force service.

CONCLUSION

23. There is no error or infirmity in the findings of the belated Release Medical Board and thus the OA 1638 of 2018 is dismissed, being devoid of merit.

24. There is no order as to costs.

Pronounced in the open court on this 7 day of October, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/PRGx/