

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

OA 1746/2019

Ex Sgt Mukhesh Kumar Jha ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate

For Respondents : Wg Cdr Saharawat, Deptt. Representative

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
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 has filed this O.A and the reliefs claimed in Para 8 read as under:-

"(a) To direct the respondents to place all medical records including medical boards and Release Medical Board conducted by the respondents for the perusal of the court.

(b) To set aside the letter dated 24.04.2017 and 25.04.2019 rejecting the disability pension of the applicant.

(c) To grant disability pension to the applicant from the date of retirement i.e. 01.08.2017.

(d) To grant the broad banding of disability pension and round off the disability element from 40% to 50% from 01.08.2017 for life.

(e) To direct the respondents 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 was enrolled in the Indian Air Force on 15.07.1997 in a fit medical category and discharged from service on 31.07.2017 under the clause "On fulfilling the conditions of his enrolment" after rendering total 20 years and 15 days of regular service. The Release Medical Board held on 03.10.2016 opined that the applicant was found to be suffering from "**Obsessive Compulsive Disorder**". The said disability was assessed @40% for life, and the net assessment qualifying for disability pension was assessed as nil for life and the disability was held as neither attributable to nor aggravated by military service.

3. The applicant's initial claim for the grant of the disability element of pension was rejected and communicated to the applicant vide letter No. Air HQ/99798/1/791184/07/17/DAV (DP/RMB) dated 24.04.2017 with an advice to prefer first appeal within six months of receipt of the letter, if he so desired.

4. The applicant, thereafter, preferred first appeal against his disability dated 05.09.2017 to the respondents for the

grant of disability pension, and the same was rejected and communicated to the applicant vide letter dated 25.04.2019. Aggrieved by the response from the respondents, the applicant has filed the instant O.A. and thus, in the interest of justice, in terms of Section 21(2)(b) of the AFT Act, 2007, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

5. 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.

6. The applicant also placed reliance on various verdicts of the Hon'ble Supreme Court in the case of ***Ex Gnr Laxmanram Poonia vs. Union of India and Ors.*** (2017) 4 SCC 697 and in Civil Appeal No. 418/2012 titled as ***Union of India & Ors Vs. Ram Avtar*** wherein, similarly situated

personnel were given relief. The applicant placed further reliance on various orders of the AFT, Principal Bench, New Delhi in OA No. 1439/2016 titled as **Ex Sgt Girish Kumar vs. UOI & Ors.** and in OA No. 966/2013 titled as **Balbir Singh vs. UOI & Ors.** The applicant also placed a specific reliance on the order of Armed Forces Tribunal, Regional Bench, Lucknow in OA 147/2021 titled as **Ex Sgt Ajit Kumar Verma Vs. UoI & Ors.**, wherein similarly situated personnel was given relief.

7. Per Contra, learned counsel for the respondents submits that under the provisions of Rule 153 of the Pension Regulations for the Indian 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 Indian Air Force service and is assessed 20% or more. The learned counsel for the respondents further submits that since the applicant's disability was 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

8. On the careful perusal of the materials available on record and also having heard the submissions made on behalf of the parties, we are of the view that it is not in dispute that the extent of disability was assessed to be 40% which is the more than bare minimum for grant of disability pension in terms of Rule 153 of the Pension Regulations for the Indian 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.

9. At the outset, it may be useful to refer to Para 54 of the Guide to Medical Officers (Military Pensions) 2002 as amended in 2008, which provides for details of the factors which have a bearing on attributability and/or aggravation of mental/psychiatric disorders, which read as under :

"54. Mental (Psychiatric) Disorders

Psychiatric illness results from a complex interplay of endogenous (genetic/biological) and exogenous (environmental, psychosocial as well as physical) factors. This is true for the entire spectrum of psychiatric disorders and the earlier dichotomy between "neurosis" and "psychosis" is no longer valid. The relative contribution of each, of course, varies from one diagnostic category to another and from case to case.

The concept of aggravation due to the stress and strain of military service can be, therefore, evaluated independent of the diagnosis and will be determined by the specific circumstances of each case. Grant of compensatory benefits related to aggravation by service

factors may be considered in the following circumstances :

(a) **Psychiatric disorder arising within 6 months (extendable upto 12 months in some cases) of serious/multiple injuries (e.g. amputation of upper/lower limb, paraplegia, quadriplegia, severe head injury resulting in hemiplegia of gross neurocognitive deficit) which are themselves considered attributable to military service. This includes Post Traumatic Stress Disorder (PTSD).**

(b) **Psychiatric disorders arising within 6 months (extendable upto 12 months in exceptional cases) of:**

- (i) **CI ops tenure exceeding 2 years**
- (ii) **HA tenure exceeding 18 months**
- (iii) **Siachen tenure exceeding 6 months**
- (iv) **Deployment of extreme isolated posts for over 6 months**
- (v) **Incarceration as PW for more than 60 days**
- (vi) **Being held hostage under threat of death/torture for over 30 days**
- (vii) **Separation from the immediate family for 12 months or more at a stretch owing to exigencies of service, except when such separation is due to the individual being under arrest/involved in disciplinary proceedings.**

(c) **Psychiatric disorders arising within 3 months of denial of leave due to exigencies of service in the face of :**

- (i) **Death of parent when the individual is the only child/son.**
- (ii) **Death of spouse or children**
- (iii) **Heinous crimes (e.g. murder, rape or dacoity) against members of the immediate family**
- (iv) **Reprisals or the threat of reprisals against members of the immediate family by militants/terrorists owing to the fact of the individual being a member of the Armed Forces**
- (v) **Natural disasters such as cyclones/earthquakes involving the safety of the immediate family**
- (vi) **Marriage of children or sister when the individual is the only brother thereof and specially if their father is deceased**

3. *Attributability may be granted under special/extraordinary circumstances associated with any of the factors enumerated in para 2 above, but the medical board must set out in writing the reasons for the same. This provision should be used sparingly/with transparent objectivity and the medical board should not allow its decision to be swayed by sympathy or other extraneous considerations.*

10. On perusal of the relevant history of the applicant as mentioned at Part II Clinical Assessment of the RMB, we find that the applicant had sleep disturbances and was having recurrent, intrusive thoughts, past events and repeated doubts of black magic done on him. It is also indicated therein that the applicant did not want to continue medications prescribed by a civil Psychiatrist, instead he sought help of religious guru and as per the AFMSF-10 dated 01.10.2014, the applicant was found to have acute religious inclination and slightly superstitious, slow and sluggish in professional matters. The relevant part of the said medical history of the applicant reads as under:

“Relevant History - History and perusal of documents revealed that the individual initially came under psychiatric attention at INHS Sanjivani in Oct 14 when he was transferred from 6 AFH where he self reported with c/o sleep disturbance and ghabarahat of one month duration. Detailed history revealed that the individual was having recurrent, intrusive, thoughts of day to day activities, past events and repeated doubts of black magic being done to harm him. He recognized his thoughts & doubts as being irrational and tried to ward them off. He had difficulty diverting his mind from these thoughts and developed ghabrahath & difficulty in falling asleep. He consulted a civil psychiatrist but did not want to continue medication for long and sought the help of religious Guru in Porbandar. He

was advised some homeopathic medicines with which he found some relief initially but again started worsening of ghabarahat & difficulty falling asleep for which he self reported to 6 AFH, leading to his psychiatric referral.

AFMSF- 10 dated 01 Oct 14 mentioned above average motivation, satisfactory performance under stress, slightly slow & sluggish in professional matters, non-drinker, acute religious inclination and slightly superstitious.....”

11. There are various factors given in order to assess the attributability and aggravation of the disability as per Para 54 of GMO 2008. In this case, there is no material to show that the applicant suffered the disease because of any factors related to the service conditions or any factors mentioned in Para 54 of the GMO, 2008. In the instant case, we have found that the RMB has given adequate reasons to justify its opinion of declaring the disability as neither attributable to nor aggravated by military service and we are satisfied with the same. Further, if the behaviour of a soldier is abnormal and is hampering his progression in service, then the respondents as employers have every right not to retain him in service and discharge him. Army is a combat force and mental and physical fitness both are a must for a soldier. Since the disability of the applicant is of

a personality/psychiatric nature and could not have been detected at the time of enrolment, we do not find any reason to hold the same as attributable to or aggravated by military service. Moreover, as per the information provided in various articles/reviews as available on the internet, generally the causes of OCD are given as under:

"The causes of OCD are not fully understood There are several theories about the causes of OCD, including:

- *Compulsions are learned behaviours, which become repetitive and habitual when they are associated with relief from anxiety.*
- *OCD is due to genetic and hereditary factors.*
- *Chemical, structural and functional abnormalities in the brain are the cause.*
- *Distorted beliefs reinforce and maintain symptoms associated with OCD.*

It is possible that several factors interact to trigger the development of OCD. The underlying causes may be further influenced by stressful life events, hormonal changes and personality traits.

12. The Hon'ble Supreme Court in the case of *Ex Cfn Narsingh Yadav Vs. Union of India & Ors. [(2019) 9 SCC 667]*, held as under :

"Though, the provision of grant of disability pension is a beneficial provision but, mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot

be said that Schizophrenia is presumed to be attributed to or aggravated by military service.

Further, it was held that :

“.....Relapsing forms of mental disorders which have intervals of normality, unless adequate history is given at the time by the member. The Entitlement Rules itself provide that certain diseases ordinarily escape detection including Epilepsy and Mental Disorder, therefore, we are unable to agree that mere fact that Schizophrenia, a mental disorder was not noticed at the time of enrolment will lead to presumption that the disease was aggravated or attributable to military service.”

13. The Hon'ble Supreme Court in the case of Union of India Vs. Ex. Sep. R. Munusamy [2022 SCC OnLine SC 892] held that :

“25. ...what exactly is the reason for a disability or ailment may not be possible for anyone to establish. Many ailments may not be detectable at the time of medical check-up, particularly where symptoms occur at intervals. Reliance would necessarily have to be placed on expert medical opinion based on an in depth study of the cause and nature of an ailment/disability including the symptoms thereof, the conditions of service to which the soldier was exposed.”

14. From the above, it is clear that the disability of the applicant does not fall within the scope of attributability to or aggravation by military service and hence the RMB has

rightly considered the disability as neither attributable to nor aggravated by service. We, therefore, do not find any infirmity in its proceedings.

CONCLUSION

15. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is not entitled for grant of disability element of pension. Therefore, OA 1746/2019 stands dismissed being devoid of merits.

16. There is no order as to costs.

Pronounced in open Court on this 22^{ed} day of July, 2024.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (J)

/nmk/