

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

OA No. 1759/2018

Ex RFN Ramesh Singh

... Applicant

Versus

Union of India &Ors.

... Respondents

For Applicant : Mr. Praveen Kumar, Advocate

For Respondents : Mr. Satya Ranjan Swain, Advocate

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) Quash and set aside the letter dated 30 Nov 2017.

(b) Direct the respondents to grant Disability Pension @50% after rounding off the same from @20% as recommended by RMB for life to the applicant with effect from 01 Jul 2017 i.e. the date of discharged from service with interest @12% p.a. till final payment is made according to policy letter issued by Govt. of India vide dated 31.01.2001 and judgment dated 10.12.2014 passed by Hon'ble Supreme Court of India in Bench of matter titled as Union of India & Others Vs. Ram Avtar in Civil Appeal 418/2012. To direct the respondents to grant the benefit of rounding off the disability pension to 50% from the date of discharge.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 11.08.1999 in a fit medical category and due to non-availability of the shelter appointment he was discharged from army service on 30.06.2017 in low medical category. The Release Medical Board held on 20.03.2017 opined that the applicant was found to be suffering from **“Optic Neuropathy (LT) Eye”**. The said disability was assessed @20% 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. 5850584H/DP/NE dated 30.10.2017 with an advice to prefer first appeal within six months of receipt of the letter, if he so desired.

4. The applicant, thereafter, submitted the Legal Notice dated 26.09.2017 to the respondents for the grant of disability pension, and the same was rejected and communicated to the applicant vide letter No. 5850584HN/Dossier/DP/NE dated 30.11.2017.

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) 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 Army 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 ***Union of India Vs. Rajbir*** in Civil Appeal No. 2904/2011 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 TA

No. 48/2009 in WP (C) No. 6324/2007 titled as **Nakhat Bharti vs. UOI & Ors.**, in TA No. 208/2010 in WP (C) No. 9764/2009 titled as **Krishna Singh vs. UOI & Ors.** and in OA No. 90/2014 titled as **Ex AC (U/T) Naresh Kumar Rana vs. UOI & Ors.** The applicant also placed a specific reliance on the orders of Armed Forces Tribunal, Principal Bench, New Delhi and Armed Forces Tribunal, Regional Bench, Lucknow in OA 1576/2019 and in OA 829/2022 respectively, wherein similarly situated personnel were given relief.

7. Per contra, the learned counsel for the respondents submitted that the sanction of disability pension in case of a disability at the time of discharge from service is based on fulfillment of essential conditions as laid down under Regulation 179 of Pension Regulations for the Army, 1961, Part-I, wherein for getting the disability pension, the disability should be held either attributable to or aggravated by the military service and the minimum assessment for the disabilities mandatorily is required to be 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 20% which is the bare minimum for grant of disability pension in terms of Regulation 179 of Pension Regulations for the Army, 1961, Part-I. The only question that arises is whether disability suffered by the applicant was attributable to or aggravated by military service.

9. 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 v. Union of India (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 commission into the Military Service.

10. Para 24 (b) of the Guide to Medical Officers (Military Pensions) 2002, amendment 2008, (GMO (MP) 2008), stipulates the conditions for assessing attributability of the

which is the result of a continuous process based on degenerative cell changes affecting tissues and organs, which will increasingly deteriorate over time with hardening of tissue or overgrowth of fibrous/interstitial tissue', and one of the causing factors of the disease are choroiditis, sinus infection, head injury, penetrating injury eye, certain drugs (ethambutol, Chloramphenicol), tobacco, alcohol, atherosclerotic embolism of artery concerned, cerebral malaria and service related traumas. The applicant as per the records of the RMB proceedings and his posting profile neither has suffered from any such condition/ailment nor any service related traumas as mentioned in the Para 54 (b) of GMO, 2008, during his entire military service. Hence the said disability cannot be held attributable to military service. However, it is evident from the Clinical Assessment, Part-II of the RMB proceedings *qua* applicant that there was a significant delay in presentation and diagnosis of the disability of the applicant and due to which the applicant was not given steroids for treating the disability. The same is reproduced herein below:-

"Relevant history- incl a serving soldier , alleged history of diminution of vision in left eye on 4th Mar 2008 and

*reported to 305 field ambulance. There was no history of trauma/ redness associated with photophobia and watering/fever with joint pain/curtain falling in front of the eye. He was referred to 181 MH and from there to 151 Base Hospital. **He was diagnosed to have Optic Neuritis left eye at Army Hospital R & R, Delhi Cantt where he has been treated symptomatically and steroids could not be given because of delay in presentation and diagnosis. He has been placed in LMC since 28 Jun 2008. Since then there was no improvement in his condition and he was continued under LMC. Last board held on 31 May 2015 and was placed in LMC E2(P). Presently reported to CH WC for RMB (release ordered vide Records 39 GR Varanasi, 39 GTC, letter no. 1208/LMC/118/RA-9 dt 24 Dec 2016). Patient offers no fresh ocular complaints or no recurrence.***

hence, it is unambiguous from the abovementioned fact that the delay in diagnosis and presentation has aggravated the applicant's condition which has till date not improved even after the treatment. It is a known fact that steroids are very effective in aiding the speedy recovery of the diseases and in repairing the damaged muscles but it is duly noted that the applicant was not given steroids due to delay in presentation and diagnosis which cannot be overlooked for coming to a conclusion that the applicant suffered from the above mentioned disability due to the delay in diagnosis and

the said disability is ought to be considered as aggravated by military service.

9. In support of abovementioned fact it is essential to advert to scientific literature available in public domain such as <https://pubmed.ncbi.nlm.nih.gov/17543391/> published by National Library of Medicine, the relevant portion of which reads as under:-

“Neuroactive steroids modulate the expression of key transcription factor schwann cell function, regulate Schwann cell proliferation and promote the expression of myelin proteins involved in the maintenance of myelin multilamellar structure, such as myelin protein zero and peripheral myelin protein 22. These actions may result in the protection and regeneration of peripheral nerves affected by different forms of pathological alterations. Indeed, neuroactive steroids are able to counteract biochemical, morphological and functional alterations of peripheral nerves in different experimental models of neuropathy, including the alterations caused by aging, diabetic neuropathy and physical injury. Therefore, neuroactive steroids, pharmacological agents able to increase their local synthesis and synthetic ligands for their receptors have a promising potential for the treatment of different forms of peripheral neuropathy.”

14. Regarding broad-banding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in ***Union of India v. Ram Avtar, Civil Appeal No. 418 of 2012*** and connected cases, has observed that individuals

similarly placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

CONCLUSION

15. Therefore, in view of our analysis and judicial pronouncements, the OA 1759/2018 is allowed. The respondents are directed to grant the disability element of disability pension to the applicant for the disability i.e. Optic Neuropathy assessed @ 20% for life which is directed to be rounded off to 50% for life from the date of discharge in terms of the judgment of the Hon'ble Supreme Court in the case of ***Ram Avtar (supra)***.

16. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within three months from the date of receipt of copy of this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

17. There is no order as to costs.

Pronounced in open Court on this ¹⁸ day of July,

2024.

[JUSTICE RAJEEDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (J)

/nmk/