

COURT No.1  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA 1828/2017

Ex Nk Yashwant Singh ... Applicant  
Versus  
Union of India and Ors. ... Respondents  
For Applicant : Mr. Virender Kadian, Advocate  
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM

HON'BLE MS. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to accept the disability of the applicant as attributable to/aggravated by military service and grant disability element of pension @15-19% rounded of to 50% with effect from the date of discharge of the applicant; along with all consequential benefits.

2. The applicant was enrolled in the Indian Army on 11.10.1998 and discharged on 28.02.2015 on the ground of non-availability of sheltered appointment. The Release Medical Board dated 08.11.2014 held that the applicant was

fit to be discharged from service in composite low medical category CEE(P) for the disability - ECTOPIC KIDNEY (RT) WITH BORDERLINE PUJ @ 15-19 % for life while the qualifying element for disability pension was recorded as NIL for life on account of disabilities being treated as neither attributable to nor aggravated by military service (NANA).

3. The claim of the applicant for grant of disability pension was rejected and subsequently, his first appeal and second appeal were rejected as well stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

4. Placing reliance on the judgement of the Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India & Ors [2013 (7) SCC 36], Learned Counsel for applicant argues 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 Army at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

5. It is submitted by the learned counsel that as per Para 36 of the Chapter VII of the Guide to Medical Officers, 2002 (As amended in 2008), for any individual having serum creatinine level of 1-3 mg, the disability has to be assessed at 40%, and therefore, the assessment of the Medical Officer in contrary to the GMO.

6. It is further submitted by the Ld. Counsel that the applicant has suffered an injury of 'Stress Fracture Tibia (Rt)' at the time of recruit training as has been established by the Cat Medical Board dated 03.03.1999, and due to the trauma suffered by this injury, the applicant has suffered the disability of Kidney

7. Per contra, while the learned counsel for the respondents has not disputed the facts of the case regarding the disability, he highlighted the Opinion of the Release Medical Board to the effect that the aforesaid disability of the applicant was assessed as "neither attributable to nor aggravated".

8. We have heard the learned counsel for the parties and have perused the record produced before us. However, we find it pertinent to refer to the Regulation 173 of the Pension Regulations for the Army, 1961 (hereinafter referred to as 'the

Regulations'), which deals with the disability pension of P.B.O.Rs, being relevant in the present case, is reproduced as follows:

*"173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."*

9. A perusal of the aforesaid Regulation 173, therefore, reveals that the disability pension is payable to an individual who is discharged from service on account of a disability which is attributable to or aggravated by military service and assessed at 20% or more. The question whether the disability is attributable to or aggravated by military service is to be determined under the rules contained in Appendix II. The said Appendix II contains the Entitlement Rules for Casualty Pensionary Awards, 1982 as amended from time to time. Prior thereto, there had been other Entitlement Rules for Casualty Pensionary Awards. Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982, being relevant on the point, is re-produced as follows:

*"4. Invaliding from service is a necessary condition for grant of disability pension. An individual who, at the*

*time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service. ICO/OR and equivalents in other services who are placed permanently in a medical category other than 'A' and are discharged because of alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment out are discharged before its completion of their engagement will be deemed to have been invalidated out of service."*

10. It is relevant to refer to Para 36 of the Chapter VI of the Guide to Medical Officers, 2002 titled 'Clinical Aspects of Certain Diseases', reproduced as under:

*36. Assessment of renal function is done by corroborating clinical profile with biochemical parameters.*

<i>(a) Level of serum creatinine</i>	<i>Percentage</i>
<i>1-3 mg</i>	<i>40%</i>
<i>3.1-5 mg</i>	<i>60%</i>
<i>5.1-7 mg</i>	<i>80%</i>
<i>&gt;7 mg</i>	<i>100%</i>

11. A perusal of the Clinical Assessment in the Release Medical Board reveals that the level of serum creatinine in the case of applicant is 1.0 mg as on 03.11.2014, and therefore, we are of the opinion that the disability of the applicant could not have been assessed at less than 40% at the time of Release Medical Board in view of the clear guidelines laid down by the Para 36 of the Chapter VI of the Guide to Medical Officers, 2002.

12. At this point, with respect to attributability and aggravation, we find it relevant to refer to Para 74 of the Chapter VI of the Guide to Medical Officers, 2002 titled 'Clinical Aspects of Certain Diseases', reproduced as under:

*74. Congenital Diseases of Kidney.*

*Certain congenital diseases such as polycystic disease of kidney, horse-shoe kidney, pelvic-ureteric junction obstruction (hydronephrosis), ectopic kidney, vesicoureteric 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.*

13. On an analysis of the aforesaid Para of GMO, 2002, it can be taken into consideration that the disability of 'Ectopic Kidney' and well as Borderline Pelvic Ureteric Junction Obstruction (PUJ-O) usually escape detection at the time of enrolment and may manifest later in the service, and such kidneys may be easily injured if hydronephrotic or ectopically located. Thus, it can be presumed that the disability could have escaped the detection of the initial medical board.

14. As per a report of *National Institute of Diabetes and Digestive and Kidney Diseases*, which dissects the issue of 'Ectopic Kidney', it has been specified as under:-

*“An ectopic kidney is a kidney located below, above, or on the opposite side of the kidney’s normal position in the urinary tract. The two kidneys are usually located near the middle of your back, just below your rib cage, on either side of your spine.*

*An ectopic kidney usually doesn’t cause any symptoms or health problems, and many people never find out that they have the condition. If an ectopic kidney is discovered, it is usually found during a fetal ultrasound—an imaging test that uses sound waves to create a picture of how a baby is developing in the womb—or during medical tests done to check for a urinary tract infection or to find the cause of abdominal pain. An ectopic kidney is a birth defect that happens while the fetus is developing. Researchers don’t know exactly what causes most birth defects, including ectopic kidney.”*

15. It can be concluded from the aforesaid analysis that the disability of the applicant cannot be held to be attributable, the same being a defect by birth, as well as can escape the detection of the initial medical board. As far as aggravation is concerned, we find that the disability of Ectopic Kidney cannot be anyway linked to stress fracture that has occurred almost 14 years ago, and thus, has to be considered neither attributable to nor aggravated by the military service.


16. In the case of the applicant, there is nothing to show 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.

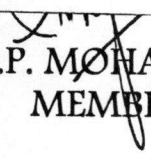
17. In view of the aforesaid analysis, we are of the view that the present OA is devoid of merit and therefore, is liable to be dismissed.

18. Hence, the OA 1828/2017 is dismissed.

19. No order as to costs.

Pronounced in the open Court on 14 day of May, 2024.

  
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(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

  
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(LT GEN C.P. MOHANTY)  
MEMBER (A)

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