

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

125.

OA 1909/2018 WITH MA 2109/2018

Ex ERA-2 Sukant Kumar Nayak ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Assem Kumar Sahay, Advocate

CORAM :

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

ORDER
05.07.2024

MA 2109/2018

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh (2009(1) AISLJ 371), the delay in filing the OA is condoned.

2. MA stands disposed of.

OA 1909/2018

3. Invoking the jurisdiction of this Tribunal under Section 14, the applicant has filed this application seeking grant of disability pension @ 20% rounded off to 50%.

4. The applicant had joined the Indian Navy on 23.01.1998 and was discharged from service on 31.01.2018, with 20 years

and 09 days of qualifying service. Before his discharge, the applicant was brought before a duly constituted Release Medical Board and he was placed in low medical category S3A2 (P) PMT for the disability - SEIZURE DISORDER ICD NO. G 40.4 @20% and the same being treated as Neither Attributable to Nor Aggravated by Naval service and his disablement was assessed @20% for life, rounded off to 50%.

5. The claim of the applicant for grant of disability pension was rejected vide letter No.PEN/600/D/LRD01:01/2018/122762 dated 13.12.2017 and subsequently, his first appeal dated 17.05.2018 was rejected as well stating that the aforesaid disability was considered as neither attributable to nor aggravated by military service. Aggrieved by aforesaid rejection the applicant has filed this OA.

6. On behalf of the applicant, it was submitted that he was enrolled in the Indian Navy in a fit medical category both physically and mentally and that there was no adverse medical opinion recorded at the time of induction into service.

7. The applicant further submits that in terms of the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs Union of India & Ors.* in CA No. 4949/2013, he is entitled to the benefit

of grant of disability element of pension and in terms of UOI & Ors. Vs Ram Avatar in Civil Appeal No. 418/2012, he is entitled to the benefit of rounding off his disability element of pension from 20% to 50%.

8. The applicant submits that there is nothing on the record to show that he was suffering from the disease at a time of entry into service and that it has to be presumed that he was in sound and mental condition at the time of entry into service and deterioration in his health has to be held to be attributable to stress and strain of naval service.

9. The respondents through their counter affidavit submitted on their behalf submit that in the instant case, there is no documented evidence of fever, infection, trauma or any other service related stressors, leading to the onset of the disability and that the onset of the ID was in a peace station. The respondents further submit that there are no aggravating or attributable factors brought forth in the instant case, which fulfill the criteria in terms of Para 33, Chap VI of the GMO 2002, amended 2008 and the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008. The respondents

reiterated that the onset of the disease in the instant case was in a peace station.

10. The respondents further submit that as per the existing policy, personnel enrolled in the Indian Navy have to undergo a primary medical examination at the time of enrolment which is carried out by the Recruiting Medical Officer and respective Recruiting Centers and that internal disorders cannot be detected by the medical officer conducting recruiting medical examination at the time of enrollment in the absence of history or overt manifestation of symptoms. The respondents have thus prayed that the OA be dismissed.

11. Inter alia, on behalf of the applicant reliance was also placed on the factum that the appellant *Dharamvir Singh* in Civil Appeal 4949/2013 suffered from Generalised Seizures(Epilepsy), that the respondent Rajbir Singh in *UOI & Ors. Vs. Rajbir Singh* in Civil Appeal No. 2904/2011, suffered from Generalised Seizures, and that in :-

- a) that in CA 5163/2011 in *Ex Recruit Amit Kumar* suffered from Manic Episode;
- b) that in CA 5260/2012 in *Ex Sep Tarlochan Singh* suffered from Epilepsy;

- c) in CA 10105/2011 the respondent *Harbans Singh* suffered from Epilepsy;
- d) in CA 1498/2011 in *Ex Sgt Suresh Kumar Sharma* suffered from Generalised Seizures;
- e) in CA 14478/2011 in *Ajit Singh* suffered from Idiopathic Epilepsy;
- f) in CA 5414/2011 in *Rakesh Kumar Singla* suffered from Bipolar Mood disorder, that all of these cases were also taken up in Civil Appeal in 2904/2011 in *Rajbir Singh (Supra)*, and it has been submitted on behalf of the applicant in each of the said cases, the disability element of pension was granted to the Armed Forces Personnel.

12. The Respondents on the other hand, placed reliance on the verdict of the Hon'ble Supreme Court in *Ex Cfn Narsingh Yadav Vs. UOI & Ors.* in Civil Appeal No. 7672/2019, to contend to the effect that the diseases which are undetectable by carrying out physical examination on enrolment unless adequate history is given at the time of enrolment by the member cannot be held to be attributable to the naval service. Specific reliance was placed on behalf of the respondents on the observations of the Hon'ble Supreme Court in Paras- 20 and 21 thereof which read to the effect:-

“20) In the present case, clause 14(d), as amended in the year 1996 and reproduced above, would be applicable as entitlement to disability pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. 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.

21) Though, the opinion of the Medical Board is subject to judicial review but the Courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. The invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the Report of the invaliding Medical Board.”

13. On a consideration of the submissions made on behalf of either side, it has to be observed that as laid down by the Hon^{ble} Supreme Court in Ex Cfn Narsingh Yadav (supra) vide observations in Para 18 thereof, each case has to be examined whether the duties assigned to the individual may have led to stress and strain leading to the disability.

14. The applicant in the case of Ex Cfn Narsingh Yadav (supra) was enrolled in the Indian Army on 02.12.2003 and was discharged from service on 08.05.2007, when the invaliding board had found him to be suffering from

Schizophrenia which disability had been assessed to be @20% for a period of 5 years and it had been observed vide Para-19 of the Hon'ble Supreme Court to the effect:

“The appellant was a young boy of 18 years at the time of enrolment and had been boarded within 3½ years of his service. Even if he was suffering from any mental disorder prior to enrolment, the same could not be detected as there were intervals of normality. The appellant was posted in peace station as a Vehicle Mechanic. Neither the nature of job nor the place of posting was such which could have caused stress and strain leading to disability as attributed to or aggravated by military service.”

15. The facts of the instant case however are not in *pari materia* with the facts of the case of Ex Cfn Narsingh Yadav (supra). This is so in as much as the applicant herewith was discharged from service in low medical Category after more than 20 years and 9 days of service.

16. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down by the Hon'ble Supreme Court in Dharamvir Singh (supra), a personnel of the Armed forces has to be presumed to have been inducted into military service in a fit condition, if there is no note of record at the time of entrance in relation to any disability in the event of his subsequently being discharged from service on medical grounds the disability has

to be presumed to be due to service unless the contrary is established, - is no more res integra.

17. It is essential to observe that the facts of the instant case are pari materia to the facts in the case of OA 2341/2019 titled Ex L COM (TEL) Satish Kumar v. UoI & Ors. [Date of Decision: 12.09.2023] wherein it was observed as under:

16. Furthermore, the 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which take effect from 01.01.2008 provide vide Paras 6, 7, 10, 11 to the effect:-

"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.

7. 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 contacted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course 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. Altitudes etc.”

(emphasis supplied)

has not been obliterated.

Thus, the ratio of the verdicts in Dharamvir Singh Vs. Union Of India &Ors (Civil Appeal No. 4949/2013); (2013 7 SCC 316, Sukhvinder Singh Vs. Union Of India &Ors, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, UOI &Ors. Vs. Rajbir Singh (2015) 12 SCC 264 and UOI & Ors. Vs. Manjeet Singh dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.”

18. In view of the aforesaid analysis, we find that with nothing thus on the record to indicate that the applicant suffered from any disease prior to enrolment, and thus it has to be held that the disability of the applicant i.e. "SEIZURE DISORDER ICD NO. G 40.4" in the instant case, was caused due to the stress and strain of naval service.

19. The OA 1909/2018 is thus allowed. The applicant is held entitled to the grant of disability pension for life qua the disability of "SEIZURE DISORDER ICD NO. G 40.4" @20% for life which in terms of the verdict of the Hon'ble Supreme Court in UOI & Ors. Vs Ramavtar in Civil Appeal No. 418/2012 is rounded off to 50% for life, from the date of discharge.

20. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

21. No order as to costs.
22. Pending application(s), if any, are disposed of.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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