

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

OA 1955/2018 with MA 532/2020

Ex Nk Sube Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Omprakash Kr. Srivastava,
KN Sharma, Vinay Makhija & Mr. SK
Tripathi Advocate

For Respondents : Mr. Avdhesh Kumar, Advocate

CORAM :

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

ORDER

MA 532/2020

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 9855 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of ***UoI & Ors Vs Tarsem Singh*** 2009(1)AISLJ 371 and in ***Ex Sep Chain Singh Vs Union of India & Ors*** (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 532/2020 is allowed and the delay of 9855 days in filing the OA 1955/2018 is thus condoned. The MA is disposed of accordingly.

OA 1955/2018

2. Invoking the jurisdiction of the 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 read as under :

- (a) To direct the respondents to grant the applicant with the 50% disability from the date of superannuation i.e 01.11.1991.**
- (b) To direct the respondents to pay arrears from the date of discharge i.e 01.11.1991 along with interest @ 12% per annum till its payment to the applicant.**
- (c) Pass any other or such further order or orders as deemed fit to this Hon'ble Tribunal in order to secure the ends of justice in favour of the applicant.**

BRIEF FACTS

3. The applicant was enrolled in Indian Army on 07.07.1979. The applicant, thereafter, was discharged from service on 31.10.1991 in low medical category BEE (Permt). The Release Medical Board (RMB) held on 10.06.1991 assessed the applicant's disability 'IHD (ANGINA) (411) ' @ 20% for two years and the same has been considered as 'neither attributable to nor aggravated by military service' (NANA)'. Based on the recommendations of the RMB, the disability element of pension has been denied to the applicant.

4. The initial claim for grant of disability pension was rejected by PCDA(P) Allahabad accepting the disability as "neither attributable to nor aggravated by military service". The above fact was communicated to the applicant vide EME Records letter no 14534796/D-7/Pen (i) dated 19th August 1992 with an advice that he may prefer an appeal to the Appellate Committee within six months from the date 30th September 1992 on the grounds he deemed fit to put forth.

5. The applicant had preferred appeal dated 16th February 2011 against rejection of disability pension received vide his first appeal no 14534796/3040/SS/18 dated 17th February 2011. Accordingly, the said appeal was suitably replied to vide EME records letter no 14534796/DP-2/Pen dated 07th May 2011. Thereafter, the applicant had submitted a application dated 03rd May 2018, which was also suitably replied vide EME records vide letter no. 14534796/DP-1/Pen dated 28th May 2018. Aggrieved by this, the applicant has filed the instant OA. In the interest of justice, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

6. The learned counsel for the applicant submitted that the applicant at the time of enrolment was fully fit medically and physically and no note was made in his medical documents to the effect that he was suffering from any disease at that time, and thus the onset of the disability occurred during service would be presumed to be due to stress and strain of the military service.

7. The learned counsel submitted that the disability in question had occurred on 28.12.1982 whilst he was posted in field area, still his disability was considered as neither attributable to nor aggravated by military service.

8. The learned counsel explained about the stressful and challenging conditions of service performed by the applicant having served in various places in different environmental and geographical conditions in his prolonged service. The learned counsel further submitted that the disability of the applicant was caused due to the stress and strain of service while posted to field area and as the applicant was performing military duties despite having been diagnosed with the IHD. The learned counsel, therefore, prayed that

the disability in question may be held as attributable to and aggravated by military service and that the disability pension may be granted to the applicant.

9. In support of his contentions, the learned counsel relied upon the judgments of the Hon'ble Supreme Court including the case of **Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316]** and in **Union of India & Anr. Vs. Rajbir Singh [2015 (2) SCALE 371]**, 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 being in low medical category, any deterioration in his health, which may have taken place, shall be presumed to be 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.

10. *Per contra*, the learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed since the RMB, being an expert body, found the disability of the applicant as "Neither Attributable to Nor Aggravated by Military Service" on the ground that the disability was constitutional in nature. The learned counsel submitted that as the applicant was discharged at his own request and his disability being considered as NANA, he is not entitled to disability pension.

ANALYSIS

11. We have heard the learned counsel for the parties and have perused the record. As the disability in question i.e. IHD, has been assessed @ 20% for two years, the only issue which needs to be considered in this case is as to whether the applicant's disability is attributable to/aggravated by the military service or not.

12. It is an undisputed fact that at the time of joining the Indian Army on 07.07.1979 and the applicant was found medically and physically fully fit and was discharged from service on 31.10.1991 at his own request. The present disability has admittedly been diagnosed on 28.12.1982 and it is also admitted that the applicant was placed in low medical category 'BEE (Permt)' at the time of discharge from service.

13. 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 for Casualty Pensionary Awards, 1982 and the General Rules of Guide to Medical Officers (Military Pensions), 2002 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."

14. The Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Rajbir Singh [2015 (2) SCALE 371]** decided on 13.02.2015, after taking note of its judgement in the case of *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.....”

15. In Annexure I to Chapter VI of the Guide to Medical Officers (Military Pensions), 1980, Myocardial Infarction and other forms of IHD along with other diseases has been classified as the diseases affected by stress and strain of service. However, various factors have been detailed qua the disease IHD in Para 47 of Chapter VI of the Guide to Medical Officers (Military Pensions) 2008, including prolonged stress and strain and physical hardship caused by serving in field and high altitude areas have been given which cause the heart diseases to the army personnel. We find it relevant to refer to Para 47 of the GMO (MP) 2008, which is as under:-

“47. Ischaemic Heart Disease (IHD). IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the atheromatous plaque and a variable degree of occlusion of the coronary artery. A total occlusion results in myocardial infarction in the territory of the artery occluded. Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It

is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias. The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service.....”

16. In the present case at hand, it is not disputed that the onset of the disability of the applicant occurred while he was posted in field area and as per Para 47 of the GMO (MP) 2008, the disability of IHD occurring in field area will be attributable to military service. We, therefore, hold the disability suffered by the applicant as applicant as attributable to military service.

17. In so far as the disability of the applicant, which was considered to be of permanent nature, but assessed for a particular period i.e. for two years is concerned, it is important to refer to the judgment of Hon'ble Supreme Court in the case of Commander Rakesh Pande Vs. Union of

India & Ors. [Civil Appeal No. 5970 of 2019] decided on 28.11.2019, wherein the Hon'ble Apex Court while interfering with the decision of the Armed Forces Tribunal granting disability pension for five years to the applicant, granted the disability for life and observed as under :

***“Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual himself requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @ 50% for life.*”**

[Emphasis supplied]

It is pertinent to mention here that the Tribunal has followed the aforesaid judgment of the Hon'ble Apex Court in numerous cases where the duration of disablement was for a particular period, but still was considered to be for life.

18. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled for disability element of pension in respect of disability i.e 'IHD (ANGINA)' @ 20% for life.

CONCLUSION

19. Therefore, the OA 1955/2018 is allowed. The respondents are directed to grant the disability element of pension for the disability of 'IHD (ANGINA)' to the applicant @ 20% for life. Accordingly, the respondents are 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. The amount of arrears however are directed to commence to run from a period of three years prior to the institution of the present OA, in terms of the verdict of the Hon'ble Supreme Court in **Tarsem Singh (supra)** which 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.

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

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**

/pooja/