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

OA 2039 /2018

Ex Sub Panchi Lal ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Virendra Singh Kadian, Advocate
For Respondents : Mr. K.K. Tyagi, 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 @20% 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 27.02.1986 and discharged on 29.02.2016 after serving for more than 30 years of qualifying service. The Release Medical Board held that the applicant was fit to be discharged from service in composite low medical category for the disability - INTERMITTENT EXOTROPIA @ 20% 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 vide letter No. JC-764879/DP-1/PEN dated 30.04.2016 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. ***UOI & 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. 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".

6. 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."*

7. 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."*

8. As per ***Report of National Library of Medicine, National Centre for Biotechnology Information,*** Intermittent exotropia is the most common type of strabismus. It is characterised by occasional outward deviation of one or alternate eyes. Frequency, duration of deviation, and control vary from individual to individual. It is defined as a non-constant exodeviation that manifests predominantly at distance fixation and may progress over a variable period to near fixation. This entity is also named distance exotropia, divergent squint, periodic exotropia, or exotropia of inattention. Underlying uncorrected refractive errors have been postulated as a mechanism for exodeviations. Among uncorrected myopes, lesser than normal accommodative effort is needed for near vision. This decreased accommodative convergence has been described as the

underlying cause for increased exo-deviations among myopes.

9. However, on an analysis of the summary & opinion of the Medical Specialist, we find that there is nothing on record to show that the disability of the applicant was actually caused due to service related factors, and the disability of the applicant in the instant case is apparently a constitutional disorder and thus, has to be considered as neither attributable to nor aggravated by the military service.

10. As the medical literature referred above shows that Intermittent Exotropia is a constitutional disease, it obviously could not and did not exist at the time of enrolment and there could not have been any note made of the same at the time of enrolment. In respect of such diseases occurring while in service, we may refer to Rule 14 of the Entitlement Rules for Casualty Pensionary Awards, 1982 which reads as under:

> *14. In respect of diseases, the following rule will be observed:-*
>
> *(a) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease will fall for acceptance on the basis of aggravation.*
>
> *(b) A disease which has led to an individual"s discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual"s acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.*

(c) If the disease is accepted 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.

11. 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.

12. 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.

13. Hence, the OA 2039/2018 is dismissed.

14. No order as to costs.

15. Pending miscellaneous applications, if any, stand closed.

Pronounced in the open Court on 31st day of May, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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